

1 **SALES AND USE TAX EXEMPTION FOR ELECTRONIC**
2 **FINANCIAL PAYMENT SERVICES**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Howard A. Stephenson**

6 House Sponsor: Gregory H. Hughes

8 **LONG TITLE**

9 **General Description:**

10 This bill enacts a sales and use tax exemption for electronic financial payment services.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ enacts a sales and use tax exemption for electronic financial payment services; and
- 15 ▶ makes technical and conforming changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 This bill provides effective dates.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **59-12-102 (Superseded 07/01/14)**, as last amended by Laws of Utah 2012, Chapters
23 255, 312, 405, and 410

24 **59-12-102 (Effective 07/01/14)**, as last amended by Laws of Utah 2012, Chapters 255,
25 312, 405, 410, and 424

26 **59-12-104**, as last amended by Laws of Utah 2012, Chapters 255, 399, 405, and 410

28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **59-12-102 (Superseded 07/01/14)** is amended to read:

30 **59-12-102 (Superseded 07/01/14). Definitions.**

31 As used in this chapter:

32 (1) "800 service" means a telecommunications service that:

33 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

34 (b) is typically marketed:

35 (i) under the name 800 toll-free calling;

36 (ii) under the name 855 toll-free calling;

37 (iii) under the name 866 toll-free calling;

38 (iv) under the name 877 toll-free calling;

39 (v) under the name 888 toll-free calling; or

40 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

41 Federal Communications Commission.

42 (2) (a) "900 service" means an inbound toll telecommunications service that:

43 (i) a subscriber purchases;

44 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to

45 the subscriber's:

46 (A) prerecorded announcement; or

47 (B) live service; and

48 (iii) is typically marketed:

49 (A) under the name 900 service; or

50 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

51 Communications Commission.

52 (b) "900 service" does not include a charge for:

53 (i) a collection service a seller of a telecommunications service provides to a

54 subscriber; or

55 (ii) the following a subscriber sells to the subscriber's customer:

56 (A) a product; or

57 (B) a service.

- 58 (3) (a) "Admission or user fees" includes season passes.
- 59 (b) "Admission or user fees" does not include annual membership dues to private
- 60 organizations.
- 61 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 62 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 63 Agreement after November 12, 2002.
- 64 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 65 (a) listed under Subsection (6); and
- 66 (b) that are imposed within a local taxing jurisdiction.
- 67 (6) "Agreement sales and use tax" means a tax imposed under:
- 68 (a) Subsection 59-12-103(2)(a)(i)(A);
- 69 (b) Subsection 59-12-103(2)(b)(i);
- 70 (c) Subsection 59-12-103(2)(c)(i);
- 71 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 72 (e) Section 59-12-204;
- 73 (f) Section 59-12-401;
- 74 (g) Section 59-12-402;
- 75 (h) Section 59-12-703;
- 76 (i) Section 59-12-802;
- 77 (j) Section 59-12-804;
- 78 (k) Section 59-12-1102;
- 79 (l) Section 59-12-1302;
- 80 (m) Section 59-12-1402;
- 81 (n) Section 59-12-1802;
- 82 (o) Section 59-12-2003;
- 83 (p) Section 59-12-2103;
- 84 (q) Section 59-12-2213;
- 85 (r) Section 59-12-2214;

- 86 (s) Section 59-12-2215;
- 87 (t) Section 59-12-2216;
- 88 (u) Section 59-12-2217; or
- 89 (v) Section 59-12-2218.
- 90 (7) "Aircraft" is as defined in Section 72-10-102.
- 91 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 92 (a) except for:
- 93 (i) an airline as defined in Section 59-2-102; or
- 94 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 95 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 96 state, of an airline; and
- 97 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 98 whether the business entity performs the following in this state:
- 99 (i) check, diagnose, overhaul, and repair:
- 100 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 101 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 102 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 103 engine;
- 104 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 105 aircraft:
- 106 (A) an inspection;
- 107 (B) a repair, including a structural repair or modification;
- 108 (C) changing landing gear; and
- 109 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 110 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 111 completely apply new paint to the fixed wing turbine powered aircraft; and
- 112 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 113 results in a change in the fixed wing turbine powered aircraft's certification requirements by the

114 authority that certifies the fixed wing turbine powered aircraft.

115 (9) "Alcoholic beverage" means a beverage that:

116 (a) is suitable for human consumption; and

117 (b) contains .5% or more alcohol by volume.

118 (10) "Alternative energy" means:

119 (a) biomass energy;

120 (b) geothermal energy;

121 (c) hydroelectric energy;

122 (d) solar energy;

123 (e) wind energy; or

124 (f) energy that is derived from:

125 (i) coal-to-liquids;

126 (ii) nuclear fuel;

127 (iii) oil-impregnated diatomaceous earth;

128 (iv) oil sands;

129 (v) oil shale; or

130 (vi) petroleum coke.

131 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
132 facility" means a facility that:

133 (i) uses alternative energy to produce electricity; and

134 (ii) has a production capacity of 2 megawatts or greater.

135 (b) A facility is an alternative energy electricity production facility regardless of
136 whether the facility is:

137 (i) connected to an electric grid; or

138 (ii) located on the premises of an electricity consumer.

139 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
140 provision of telecommunications service.

141 (b) "Ancillary service" includes:

- 142 (i) a conference bridging service;
- 143 (ii) a detailed communications billing service;
- 144 (iii) directory assistance;
- 145 (iv) a vertical service; or
- 146 (v) a voice mail service.
- 147 (13) "Area agency on aging" is as defined in Section 62A-3-101.
- 148 (14) "Assisted amusement device" means an amusement device, skill device, or ride
- 149 device that is started and stopped by an individual:
 - 150 (a) who is not the purchaser or renter of the right to use or operate the amusement
 - 151 device, skill device, or ride device; and
 - 152 (b) at the direction of the seller of the right to use the amusement device, skill device,
 - 153 or ride device.
- 154 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or
- 155 washing of tangible personal property if the cleaning or washing labor is primarily performed
- 156 by an individual:
 - 157 (a) who is not the purchaser of the cleaning or washing of the tangible personal
 - 158 property; and
 - 159 (b) at the direction of the seller of the cleaning or washing of the tangible personal
 - 160 property.
- 161 (16) "Authorized carrier" means:
 - 162 (a) in the case of vehicles operated over public highways, the holder of credentials
 - 163 indicating that the vehicle is or will be operated pursuant to both the International Registration
 - 164 Plan and the International Fuel Tax Agreement;
 - 165 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
 - 166 certificate or air carrier's operating certificate; or
 - 167 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
 - 168 stock, the holder of a certificate issued by the United States Surface Transportation Board.
- 169 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the

- 170 following that is used as the primary source of energy to produce fuel or electricity:
- 171 (i) material from a plant or tree; or
- 172 (ii) other organic matter that is available on a renewable basis, including:
- 173 (A) slash and brush from forests and woodlands;
- 174 (B) animal waste;
- 175 (C) methane produced:
- 176 (I) at landfills; or
- 177 (II) as a byproduct of the treatment of wastewater residuals;
- 178 (D) aquatic plants; and
- 179 (E) agricultural products.
- 180 (b) "Biomass energy" does not include:
- 181 (i) black liquor;
- 182 (ii) treated woods; or
- 183 (iii) biomass from municipal solid waste other than methane produced:
- 184 (A) at landfills; or
- 185 (B) as a byproduct of the treatment of wastewater residuals.
- 186 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 187 property, products, or services if the tangible personal property, products, or services are:
- 188 (i) distinct and identifiable; and
- 189 (ii) sold for one nonitemized price.
- 190 (b) "Bundled transaction" does not include:
- 191 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 192 the basis of the selection by the purchaser of the items of tangible personal property included in
- 193 the transaction;
- 194 (ii) the sale of real property;
- 195 (iii) the sale of services to real property;
- 196 (iv) the retail sale of tangible personal property and a service if:
- 197 (A) the tangible personal property:

- 198 (I) is essential to the use of the service; and
- 199 (II) is provided exclusively in connection with the service; and
- 200 (B) the service is the true object of the transaction;
- 201 (v) the retail sale of two services if:
 - 202 (A) one service is provided that is essential to the use or receipt of a second service;
 - 203 (B) the first service is provided exclusively in connection with the second service; and
 - 204 (C) the second service is the true object of the transaction;
- 205 (vi) a transaction that includes tangible personal property or a product subject to
- 206 taxation under this chapter and tangible personal property or a product that is not subject to
- 207 taxation under this chapter if the:
 - 208 (A) seller's purchase price of the tangible personal property or product subject to
 - 209 taxation under this chapter is de minimis; or
 - 210 (B) seller's sales price of the tangible personal property or product subject to taxation
 - 211 under this chapter is de minimis; and
 - 212 (vii) the retail sale of tangible personal property that is not subject to taxation under
 - 213 this chapter and tangible personal property that is subject to taxation under this chapter if:
 - 214 (A) that retail sale includes:
 - 215 (I) food and food ingredients;
 - 216 (II) a drug;
 - 217 (III) durable medical equipment;
 - 218 (IV) mobility enhancing equipment;
 - 219 (V) an over-the-counter drug;
 - 220 (VI) a prosthetic device; or
 - 221 (VII) a medical supply; and
 - 222 (B) subject to Subsection (18)(f):
 - 223 (I) the seller's purchase price of the tangible personal property subject to taxation under
 - 224 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
 - 225 (II) the seller's sales price of the tangible personal property subject to taxation under

226 this chapter is 50% or less of the seller's total sales price of that retail sale.

227 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
228 service that is distinct and identifiable does not include:

229 (A) packaging that:

230 (I) accompanies the sale of the tangible personal property, product, or service; and

231 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
232 service;

233 (B) tangible personal property, a product, or a service provided free of charge with the
234 purchase of another item of tangible personal property, a product, or a service; or

235 (C) an item of tangible personal property, a product, or a service included in the
236 definition of "purchase price."

237 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
238 product, or a service is provided free of charge with the purchase of another item of tangible
239 personal property, a product, or a service if the sales price of the purchased item of tangible
240 personal property, product, or service does not vary depending on the inclusion of the tangible
241 personal property, product, or service provided free of charge.

242 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
243 does not include a price that is separately identified by tangible personal property, product, or
244 service on the following, regardless of whether the following is in paper format or electronic
245 format:

246 (A) a binding sales document; or

247 (B) another supporting sales-related document that is available to a purchaser.

248 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
249 supporting sales-related document that is available to a purchaser includes:

250 (A) a bill of sale;

251 (B) a contract;

252 (C) an invoice;

253 (D) a lease agreement;

254 (E) a periodic notice of rates and services;

255 (F) a price list;

256 (G) a rate card;

257 (H) a receipt; or

258 (I) a service agreement.

259 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
260 property or a product subject to taxation under this chapter is de minimis if:

261 (A) the seller's purchase price of the tangible personal property or product is 10% or
262 less of the seller's total purchase price of the bundled transaction; or

263 (B) the seller's sales price of the tangible personal property or product is 10% or less of
264 the seller's total sales price of the bundled transaction.

265 (ii) For purposes of Subsection (18)(b)(vi), a seller:

266 (A) shall use the seller's purchase price or the seller's sales price to determine if the
267 purchase price or sales price of the tangible personal property or product subject to taxation
268 under this chapter is de minimis; and

269 (B) may not use a combination of the seller's purchase price and the seller's sales price
270 to determine if the purchase price or sales price of the tangible personal property or product
271 subject to taxation under this chapter is de minimis.

272 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
273 contract to determine if the sales price of tangible personal property or a product is de minimis.

274 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
275 the seller's purchase price and the seller's sales price to determine if tangible personal property
276 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
277 price of that retail sale.

278 (19) "Certified automated system" means software certified by the governing board of
279 the agreement that:

280 (a) calculates the agreement sales and use tax imposed within a local taxing
281 jurisdiction:

- 282 (i) on a transaction; and
- 283 (ii) in the states that are members of the agreement;
- 284 (b) determines the amount of agreement sales and use tax to remit to a state that is a
- 285 member of the agreement; and
- 286 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

287 (20) "Certified service provider" means an agent certified:

- 288 (a) by the governing board of the agreement; and
- 289 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
- 290 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
- 291 own purchases.

292 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel

293 suitable for general use.

294 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

295 commission shall make rules:

- 296 (i) listing the items that constitute "clothing"; and
- 297 (ii) that are consistent with the list of items that constitute "clothing" under the
- 298 agreement.

299 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

300 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other

301 fuels that does not constitute industrial use under Subsection [~~51~~] (52) or residential use

302 under Subsection [~~101~~] (102).

303 (24) (a) "Common carrier" means a person engaged in or transacting the business of

304 transporting passengers, freight, merchandise, or other property for hire within this state.

305 (b) (i) "Common carrier" does not include a person who, at the time the person is

306 traveling to or from that person's place of employment, transports a passenger to or from the

307 passenger's place of employment.

308 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,

309 Utah Administrative Rulemaking Act, the commission may make rules defining what

310 constitutes a person's place of employment.

311 (25) "Component part" includes:

312 (a) poultry, dairy, and other livestock feed, and their components;

313 (b) baling ties and twine used in the baling of hay and straw;

314 (c) fuel used for providing temperature control of orchards and commercial

315 greenhouses doing a majority of their business in wholesale sales, and for providing power for

316 off-highway type farm machinery; and

317 (d) feed, seeds, and seedlings.

318 (26) "Computer" means an electronic device that accepts information:

319 (a) (i) in digital form; or

320 (ii) in a form similar to digital form; and

321 (b) manipulates that information for a result based on a sequence of instructions.

322 (27) "Computer software" means a set of coded instructions designed to cause:

323 (a) a computer to perform a task; or

324 (b) automatic data processing equipment to perform a task.

325 (28) "Computer software maintenance contract" means a contract that obligates a seller

326 of computer software to provide a customer with:

327 (a) future updates or upgrades to computer software;

328 (b) support services with respect to computer software; or

329 (c) a combination of Subsections (28)(a) and (b).

330 (29) (a) "Conference bridging service" means an ancillary service that links two or

331 more participants of an audio conference call or video conference call.

332 (b) "Conference bridging service" may include providing a telephone number as part of

333 the ancillary service described in Subsection (29)(a).

334 (c) "Conference bridging service" does not include a telecommunications service used

335 to reach the ancillary service described in Subsection (29)(a).

336 (30) "Construction materials" means any tangible personal property that will be

337 converted into real property.

338 (31) "Delivered electronically" means delivered to a purchaser by means other than
339 tangible storage media.

340 (32) (a) "Delivery charge" means a charge:

341 (i) by a seller of:

342 (A) tangible personal property;

343 (B) a product transferred electronically; or

344 (C) services; and

345 (ii) for preparation and delivery of the tangible personal property, product transferred
346 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
347 purchaser.

348 (b) "Delivery charge" includes a charge for the following:

349 (i) transportation;

350 (ii) shipping;

351 (iii) postage;

352 (iv) handling;

353 (v) crating; or

354 (vi) packing.

355 (33) "Detailed telecommunications billing service" means an ancillary service of
356 separately stating information pertaining to individual calls on a customer's billing statement.

357 (34) "Dietary supplement" means a product, other than tobacco, that:

358 (a) is intended to supplement the diet;

359 (b) contains one or more of the following dietary ingredients:

360 (i) a vitamin;

361 (ii) a mineral;

362 (iii) an herb or other botanical;

363 (iv) an amino acid;

364 (v) a dietary substance for use by humans to supplement the diet by increasing the total
365 dietary intake; or

366 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
367 described in Subsections (34)(b)(i) through (v);

368 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:

369 (A) tablet form;

370 (B) capsule form;

371 (C) powder form;

372 (D) softgel form;

373 (E) gelcap form; or

374 (F) liquid form; or

375 (ii) [~~notwithstanding Subsection (34)(c)(i),~~] if the product is not intended for ingestion
376 in a form described in Subsections (34)(c)(i)(A) through (F), is not represented:

377 (A) as conventional food; and

378 (B) for use as a sole item of:

379 (I) a meal; or

380 (II) the diet; and

381 (d) is required to be labeled as a dietary supplement:

382 (i) identifiable by the "Supplemental Facts" box found on the label; and

383 (ii) as required by 21 C.F.R. Sec. 101.36.

384 (35) (a) "Direct mail" means printed material delivered or distributed by United States
385 mail or other delivery service:

386 (i) to:

387 (A) a mass audience; or

388 (B) addressees on a mailing list provided:

389 (I) by a purchaser of the mailing list; or

390 (II) at the discretion of the purchaser of the mailing list; and

391 (ii) if the cost of the printed material is not billed directly to the recipients.

392 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
393 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

394 (c) "Direct mail" does not include multiple items of printed material delivered to a
395 single address.

396 (36) "Directory assistance" means an ancillary service of providing:

397 (a) address information; or

398 (b) telephone number information.

399 (37) (a) "Disposable home medical equipment or supplies" means medical equipment
400 or supplies that:

401 (i) cannot withstand repeated use; and

402 (ii) are purchased by, for, or on behalf of a person other than:

403 (A) a health care facility as defined in Section 26-21-2;

404 (B) a health care provider as defined in Section 78B-3-403;

405 (C) an office of a health care provider described in Subsection (37)(a)(ii)(B); or

406 (D) a person similar to a person described in Subsections (37)(a)(ii)(A) through (C).

407 (b) "Disposable home medical equipment or supplies" does not include:

408 (i) a drug;

409 (ii) durable medical equipment;

410 (iii) a hearing aid;

411 (iv) a hearing aid accessory;

412 (v) mobility enhancing equipment; or

413 (vi) tangible personal property used to correct impaired vision, including:

414 (A) eyeglasses; or

415 (B) contact lenses.

416 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
417 commission may by rule define what constitutes medical equipment or supplies.

418 (38) (a) "Drug" means a compound, substance, or preparation, or a component of a
419 compound, substance, or preparation that is:

420 (i) recognized in:

421 (A) the official United States Pharmacopoeia;

- 422 (B) the official Homeopathic Pharmacopoeia of the United States;
- 423 (C) the official National Formulary; or
- 424 (D) a supplement to a publication listed in Subsections (38)(a)(i)(A) through (C);
- 425 (ii) intended for use in the:
- 426 (A) diagnosis of disease;
- 427 (B) cure of disease;
- 428 (C) mitigation of disease;
- 429 (D) treatment of disease; or
- 430 (E) prevention of disease; or
- 431 (iii) intended to affect:
- 432 (A) the structure of the body; or
- 433 (B) any function of the body.
- 434 (b) "Drug" does not include:
- 435 (i) food and food ingredients;
- 436 (ii) a dietary supplement;
- 437 (iii) an alcoholic beverage; or
- 438 (iv) a prosthetic device.
- 439 (39) (a) [~~Except as provided in Subsection (39)(c), "durable"~~] "Durable medical
- 440 equipment" means equipment that:
- 441 (i) can withstand repeated use;
- 442 (ii) is primarily and customarily used to serve a medical purpose;
- 443 (iii) generally is not useful to a person in the absence of illness or injury; and
- 444 (iv) is not worn in or on the body.
- 445 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 446 equipment described in Subsection (39)(a).
- 447 (c) Notwithstanding Subsection (39)(a), "durable medical equipment" does not include
- 448 mobility enhancing equipment.
- 449 (40) "Electronic" means:

450 (a) relating to technology; and

451 (b) having:

452 (i) electrical capabilities;

453 (ii) digital capabilities;

454 (iii) magnetic capabilities;

455 (iv) wireless capabilities;

456 (v) optical capabilities;

457 (vi) electromagnetic capabilities; or

458 (vii) capabilities similar to Subsections (40)(b)(i) through (vi).

459 (41) "Electronic financial payment service" means an establishment:

460 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
461 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
462 federal Executive Office of the President, Office of Management and Budget; and

463 (b) that performs electronic financial payment services.

464 [~~41~~] (42) "Employee" is as defined in Section 59-10-401.

465 [~~42~~] (43) "Fixed guideway" means a public transit facility that uses and occupies:

466 (a) rail for the use of public transit; or

467 (b) a separate right-of-way for the use of public transit.

468 [~~43~~] (44) "Fixed wing turbine powered aircraft" means an aircraft that:

469 (a) is powered by turbine engines;

470 (b) operates on jet fuel; and

471 (c) has wings that are permanently attached to the fuselage of the aircraft.

472 [~~44~~] (45) "Fixed wireless service" means a telecommunications service that provides
473 radio communication between fixed points.

474 [~~45~~] (46) (a) "Food and food ingredients" means substances:

475 (i) regardless of whether the substances are in:

476 (A) liquid form;

477 (B) concentrated form;

- 478 (C) solid form;
- 479 (D) frozen form;
- 480 (E) dried form; or
- 481 (F) dehydrated form; and
- 482 (ii) that are:
- 483 (A) sold for:
- 484 (I) ingestion by humans; or
- 485 (II) chewing by humans; and
- 486 (B) consumed for the substance's:
- 487 (I) taste; or
- 488 (II) nutritional value.
- 489 (b) "Food and food ingredients" includes an item described in Subsection [~~(86)~~
- 490 ~~(87)~~(b)(iii).
- 491 (c) "Food and food ingredients" does not include:
- 492 (i) an alcoholic beverage;
- 493 (ii) tobacco; or
- 494 (iii) prepared food.
- 495 [~~(46)~~ (47) (a) "Fundraising sales" means sales:
- 496 (i) (A) made by a school; or
- 497 (B) made by a school student;
- 498 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 499 materials, or provide transportation; and
- 500 (iii) that are part of an officially sanctioned school activity.
- 501 (b) For purposes of Subsection [~~(46)~~ (47)(a)(iii), "officially sanctioned school activity"
- 502 means a school activity:
- 503 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 504 district governing the authorization and supervision of fundraising activities;
- 505 (ii) that does not directly or indirectly compensate an individual teacher or other

506 educational personnel by direct payment, commissions, or payment in kind; and

507 (iii) the net or gross revenues from which are deposited in a dedicated account
508 controlled by the school or school district.

509 [~~(47)~~] (48) "Geothermal energy" means energy contained in heat that continuously
510 flows outward from the earth that is used as the sole source of energy to produce electricity.

511 [~~(48)~~] (49) "Governing board of the agreement" means the governing board of the
512 agreement that is:

513 (a) authorized to administer the agreement; and

514 (b) established in accordance with the agreement.

515 [~~(49)~~] (50) (a) For purposes of Subsection 59-12-104(41), "governmental entity"
516 means:

517 (i) the executive branch of the state, including all departments, institutions, boards,
518 divisions, bureaus, offices, commissions, and committees;

519 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
520 Office of the Court Administrator, and similar administrative units in the judicial branch;

521 (iii) the legislative branch of the state, including the House of Representatives, the
522 Senate, the Legislative Printing Office, the Office of Legislative Research and General
523 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
524 Analyst;

525 (iv) the National Guard;

526 (v) an independent entity as defined in Section 63E-1-102; or

527 (vi) a political subdivision as defined in Section 17B-1-102.

528 (b) "Governmental entity" does not include the state systems of public and higher
529 education, including:

530 (i) a college campus of the Utah College of Applied Technology;

531 (ii) a school;

532 (iii) the State Board of Education;

533 (iv) the State Board of Regents; or

534 (v) an institution of higher education.

535 [~~50~~] (51) "Hydroelectric energy" means water used as the sole source of energy to
536 produce electricity.

537 [~~51~~] (52) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
538 or other fuels:

539 (a) in mining or extraction of minerals;

540 (b) in agricultural operations to produce an agricultural product up to the time of
541 harvest or placing the agricultural product into a storage facility, including:

542 (i) commercial greenhouses;

543 (ii) irrigation pumps;

544 (iii) farm machinery;

545 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
546 registered under Title 41, Chapter 1a, Part 2, Registration; and

547 (v) other farming activities;

548 (c) in manufacturing tangible personal property at an establishment described in SIC
549 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
550 Executive Office of the President, Office of Management and Budget;

551 (d) by a scrap recycler if:

552 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
553 one or more of the following items into prepared grades of processed materials for use in new
554 products:

555 (A) iron;

556 (B) steel;

557 (C) nonferrous metal;

558 (D) paper;

559 (E) glass;

560 (F) plastic;

561 (G) textile; or

562 (H) rubber; and
563 (ii) the new products under Subsection [~~(51)~~] (52)(d)(i) would otherwise be made with
564 nonrecycled materials; or
565 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
566 cogeneration facility as defined in Section 54-2-1.
567 [~~(52)~~] (53) (a) Except as provided in Subsection [~~(52)~~] (53)(b), "installation charge"
568 means a charge for installing:
569 (i) tangible personal property; or
570 (ii) a product transferred electronically.
571 (b) "Installation charge" does not include a charge for:
572 (i) repairs or renovations of:
573 (A) tangible personal property; or
574 (B) a product transferred electronically; or
575 (ii) attaching tangible personal property or a product transferred electronically:
576 (A) to other tangible personal property; and
577 (B) as part of a manufacturing or fabrication process.
578 [~~(53)~~] (54) "Institution of higher education" means an institution of higher education
579 listed in Section 53B-2-101.
580 [~~(54)~~] (55) (a) "Lease" or "rental" means a transfer of possession or control of tangible
581 personal property or a product transferred electronically for:
582 (i) (A) a fixed term; or
583 (B) an indeterminate term; and
584 (ii) consideration.
585 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
586 amount of consideration may be increased or decreased by reference to the amount realized
587 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
588 Code.
589 (c) "Lease" or "rental" does not include:

590 (i) a transfer of possession or control of property under a security agreement or
591 deferred payment plan that requires the transfer of title upon completion of the required
592 payments;

593 (ii) a transfer of possession or control of property under an agreement that requires the
594 transfer of title:

595 (A) upon completion of required payments; and

596 (B) if the payment of an option price does not exceed the greater of:

597 (I) \$100; or

598 (II) 1% of the total required payments; or

599 (iii) providing tangible personal property along with an operator for a fixed period of
600 time or an indeterminate period of time if the operator is necessary for equipment to perform as
601 designed.

602 (d) For purposes of Subsection [~~54~~] (55)(c)(iii), an operator is necessary for
603 equipment to perform as designed if the operator's duties exceed the:

604 (i) set-up of tangible personal property;

605 (ii) maintenance of tangible personal property; or

606 (iii) inspection of tangible personal property.

607 [~~55~~] (56) "Life science establishment" means an establishment in this state that is
608 classified under the following NAICS codes of the 2007 North American Industry
609 Classification System of the federal Executive Office of the President, Office of Management
610 and Budget:

611 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

612 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
613 Manufacturing; or

614 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

615 [~~56~~] (57) "Life science research and development facility" means a facility owned,
616 leased, or rented by a life science establishment if research and development is performed in
617 51% or more of the total area of the facility.

618 [~~(57)~~] (58) "Load and leave" means delivery to a purchaser by use of a tangible storage
619 media if the tangible storage media is not physically transferred to the purchaser.

620 [~~(58)~~] (59) "Local taxing jurisdiction" means a:

621 (a) county that is authorized to impose an agreement sales and use tax;

622 (b) city that is authorized to impose an agreement sales and use tax; or

623 (c) town that is authorized to impose an agreement sales and use tax.

624 [~~(59)~~] (60) "Manufactured home" is as defined in Section 15A-1-302.

625 [~~(60)~~] (61) For purposes of Section 59-12-104, "manufacturing facility" means:

626 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
627 Industrial Classification Manual of the federal Executive Office of the President, Office of
628 Management and Budget;

629 (b) a scrap recycler if:

630 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
631 one or more of the following items into prepared grades of processed materials for use in new
632 products:

633 (A) iron;

634 (B) steel;

635 (C) nonferrous metal;

636 (D) paper;

637 (E) glass;

638 (F) plastic;

639 (G) textile; or

640 (H) rubber; and

641 (ii) the new products under Subsection [~~(60)~~] (61)(b)(i) would otherwise be made with
642 nonrecycled materials; or

643 (c) a cogeneration facility as defined in Section 54-2-1.

644 [~~(61)~~] (62) "Member of the immediate family of the producer" means a person who is
645 related to a producer described in Subsection 59-12-104(20)(a) as a:

- 646 (a) child or stepchild, regardless of whether the child or stepchild is:
647 (i) an adopted child or adopted stepchild; or
648 (ii) a foster child or foster stepchild;
649 (b) grandchild or stepgrandchild;
650 (c) grandparent or stepgrandparent;
651 (d) nephew or stepnephew;
652 (e) niece or stepniece;
653 (f) parent or stepparent;
654 (g) sibling or stepsibling;
655 (h) spouse;
656 (i) person who is the spouse of a person described in Subsections [~~(61)~~] (62)(a) through
657 (g); or
658 (j) person similar to a person described in Subsections [~~(61)~~] (62)(a) through (i) as
659 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
660 Administrative Rulemaking Act.
661 [~~(62)~~] (63) "Mobile home" is as defined in Section 15A-1-302.
662 [~~(63)~~] (64) "Mobile telecommunications service" is as defined in the Mobile
663 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
664 [~~(64)~~] (65) (a) "Mobile wireless service" means a telecommunications service,
665 regardless of the technology used, if:
666 (i) the origination point of the conveyance, routing, or transmission is not fixed;
667 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
668 (iii) the origination point described in Subsection [~~(64)~~] (65)(a)(i) and the termination
669 point described in Subsection [~~(64)~~] (65)(a)(ii) are not fixed.
670 (b) "Mobile wireless service" includes a telecommunications service that is provided
671 by a commercial mobile radio service provider.
672 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
673 commission may by rule define "commercial mobile radio service provider."

674 ~~[(65)]~~ (66) (a) Except as provided in Subsection ~~[(65)]~~ (66)(c), "mobility enhancing
675 equipment" means equipment that is:

676 (i) primarily and customarily used to provide or increase the ability to move from one
677 place to another;

678 (ii) appropriate for use in a:

679 (A) home; or

680 (B) motor vehicle; and

681 (iii) not generally used by persons with normal mobility.

682 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
683 the equipment described in Subsection ~~[(65)]~~ (66)(a).

684 (c) ~~[Notwithstanding Subsection (65) (66)(a), "mobility]~~ "Mobility enhancing
685 equipment" does not include:

686 (i) a motor vehicle;

687 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
688 vehicle manufacturer;

689 (iii) durable medical equipment; or

690 (iv) a prosthetic device.

691 ~~[(66)]~~ (67) "Model 1 seller" means a seller registered under the agreement that has
692 selected a certified service provider as the seller's agent to perform all of the seller's sales and
693 use tax functions for agreement sales and use taxes other than the seller's obligation under
694 Section 59-12-124 to remit a tax on the seller's own purchases.

695 ~~[(67)]~~ (68) "Model 2 seller" means a seller registered under the agreement that:

696 (a) except as provided in Subsection ~~[(67)]~~ (68)(b), has selected a certified automated
697 system to perform the seller's sales tax functions for agreement sales and use taxes; and

698 (b) ~~[notwithstanding Subsection (67)(a),]~~ retains responsibility for remitting all of the
699 sales tax:

700 (i) collected by the seller; and

701 (ii) to the appropriate local taxing jurisdiction.

702 ~~[(68)]~~ (69) (a) Subject to Subsection ~~[(68)]~~ (69)(b), "model 3 seller" means a seller
703 registered under the agreement that has:

- 704 (i) sales in at least five states that are members of the agreement;
- 705 (ii) total annual sales revenues of at least \$500,000,000;
- 706 (iii) a proprietary system that calculates the amount of tax:
 - 707 (A) for an agreement sales and use tax; and
 - 708 (B) due to each local taxing jurisdiction; and
- 709 (iv) entered into a performance agreement with the governing board of the agreement.

710 (b) For purposes of Subsection ~~[(68)]~~ (69)(a), "model 3 seller" includes an affiliated
711 group of sellers using the same proprietary system.

712 ~~[(69)]~~ (70) "Model 4 seller" means a seller that is registered under the agreement and is
713 not a model 1 seller, model 2 seller, or model 3 seller.

714 ~~[(70)]~~ (71) "Modular home" means a modular unit as defined in Section 15A-1-302.

715 ~~[(71)]~~ (72) "Motor vehicle" is as defined in Section 41-1a-102.

716 ~~[(72)]~~ (73) "Oil sands" means impregnated bituminous sands that:

717 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
718 other hydrocarbons, or otherwise treated;

719 (b) yield mixtures of liquid hydrocarbon; and

720 (c) require further processing other than mechanical blending before becoming finished
721 petroleum products.

722 ~~[(73)]~~ (74) "Oil shale" means a group of fine black to dark brown shales containing
723 kerogen material that yields petroleum upon heating and distillation.

724 ~~[(74)]~~ (75) "Optional computer software maintenance contract" means a computer
725 software maintenance contract that a customer is not obligated to purchase as a condition to the
726 retail sale of computer software.

727 ~~[(75)]~~ (76) (a) "Other fuels" means products that burn independently to produce heat or
728 energy.

729 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible

730 personal property.

731 [~~(76)~~] (77) (a) "Paging service" means a telecommunications service that provides
732 transmission of a coded radio signal for the purpose of activating a specific pager.

733 (b) For purposes of Subsection [~~(76)~~] (77)(a), the transmission of a coded radio signal
734 includes a transmission by message or sound.

735 [~~(77)~~] (78) "Pawnbroker" is as defined in Section 13-32a-102.

736 [~~(78)~~] (79) "Pawn transaction" is as defined in Section 13-32a-102.

737 [~~(79)~~] (80) (a) "Permanently attached to real property" means that for tangible personal
738 property attached to real property:

739 (i) the attachment of the tangible personal property to the real property:

740 (A) is essential to the use of the tangible personal property; and

741 (B) suggests that the tangible personal property will remain attached to the real
742 property in the same place over the useful life of the tangible personal property; or

743 (ii) if the tangible personal property is detached from the real property, the detachment
744 would:

745 (A) cause substantial damage to the tangible personal property; or

746 (B) require substantial alteration or repair of the real property to which the tangible
747 personal property is attached.

748 (b) "Permanently attached to real property" includes:

749 (i) the attachment of an accessory to the tangible personal property if the accessory is:

750 (A) essential to the operation of the tangible personal property; and

751 (B) attached only to facilitate the operation of the tangible personal property;

752 (ii) a temporary detachment of tangible personal property from real property for a
753 repair or renovation if the repair or renovation is performed where the tangible personal
754 property and real property are located; or

755 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
756 Subsection [~~(79)~~] (80)(c)(iii) or (iv).

757 (c) "Permanently attached to real property" does not include:

758 (i) the attachment of portable or movable tangible personal property to real property if
759 that portable or movable tangible personal property is attached to real property only for:

- 760 (A) convenience;
- 761 (B) stability; or
- 762 (C) for an obvious temporary purpose;

763 (ii) the detachment of tangible personal property from real property except for the
764 detachment described in Subsection [~~79~~] (80)(b)(ii);

765 (iii) an attachment of the following tangible personal property to real property if the
766 attachment to real property is only through a line that supplies water, electricity, gas,
767 telecommunications, cable, or supplies a similar item as determined by the commission by rule
768 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- 769 (A) a computer;
- 770 (B) a telephone;
- 771 (C) a television; or
- 772 (D) tangible personal property similar to Subsections [~~79~~] (80)(c)(iii)(A) through (C)
773 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
774 Administrative Rulemaking Act; or

775 (iv) an item listed in Subsection [~~117~~] (119)(c).

776 [~~80~~] (81) "Person" includes any individual, firm, partnership, joint venture,
777 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
778 city, municipality, district, or other local governmental entity of the state, or any group or
779 combination acting as a unit.

780 [~~81~~] (82) "Place of primary use":

781 (a) for telecommunications service other than mobile telecommunications service,
782 means the street address representative of where the customer's use of the telecommunications
783 service primarily occurs, which shall be:

- 784 (i) the residential street address of the customer; or
- 785 (ii) the primary business street address of the customer; or

786 (b) for mobile telecommunications service, is as defined in the Mobile
787 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

788 [~~82~~] (83) (a) "Postpaid calling service" means a telecommunications service a person
789 obtains by making a payment on a call-by-call basis:

790 (i) through the use of a:

791 (A) bank card;

792 (B) credit card;

793 (C) debit card; or

794 (D) travel card; or

795 (ii) by a charge made to a telephone number that is not associated with the origination
796 or termination of the telecommunications service.

797 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
798 service, that would be a prepaid wireless calling service if the service were exclusively a
799 telecommunications service.

800 [~~83~~] (84) "Postproduction" means an activity related to the finishing or duplication of
801 a medium described in Subsection 59-12-104(54)(a).

802 [~~84~~] (85) "Prepaid calling service" means a telecommunications service:

803 (a) that allows a purchaser access to telecommunications service that is exclusively
804 telecommunications service;

805 (b) that:

806 (i) is paid for in advance; and

807 (ii) enables the origination of a call using an:

808 (A) access number; or

809 (B) authorization code;

810 (c) that is dialed:

811 (i) manually; or

812 (ii) electronically; and

813 (d) sold in predetermined units or dollars that decline:

- 814 (i) by a known amount; and
- 815 (ii) with use.
- 816 [~~(85)~~] (86) "Prepaid wireless calling service" means a telecommunications service:
- 817 (a) that provides the right to utilize:
- 818 (i) mobile wireless service; and
- 819 (ii) other service that is not a telecommunications service, including:
- 820 (A) the download of a product transferred electronically;
- 821 (B) a content service; or
- 822 (C) an ancillary service;
- 823 (b) that:
- 824 (i) is paid for in advance; and
- 825 (ii) enables the origination of a call using an:
- 826 (A) access number; or
- 827 (B) authorization code;
- 828 (c) that is dialed:
- 829 (i) manually; or
- 830 (ii) electronically; and
- 831 (d) sold in predetermined units or dollars that decline:
- 832 (i) by a known amount; and
- 833 (ii) with use.
- 834 [~~(86)~~] (87) (a) "Prepared food" means:
- 835 (i) food:
- 836 (A) sold in a heated state; or
- 837 (B) heated by a seller;
- 838 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 839 item; or
- 840 (iii) except as provided in Subsection [~~(86)~~] (87)(c), food sold with an eating utensil
- 841 provided by the seller, including a:

- 842 (A) plate;
- 843 (B) knife;
- 844 (C) fork;
- 845 (D) spoon;
- 846 (E) glass;
- 847 (F) cup;
- 848 (G) napkin; or
- 849 (H) straw.
- 850 (b) "Prepared food" does not include:
- 851 (i) food that a seller only:
- 852 (A) cuts;
- 853 (B) repackages; or
- 854 (C) pasteurizes; or
- 855 (ii) (A) the following:
- 856 (I) raw egg;
- 857 (II) raw fish;
- 858 (III) raw meat;
- 859 (IV) raw poultry; or
- 860 (V) a food containing an item described in Subsections [~~86~~] (87)(b)(ii)(A)(I) through
- 861 (IV); and
- 862 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 863 Food and Drug Administration's Food Code that a consumer cook the items described in
- 864 Subsection [~~86~~] (87)(b)(ii)(A) to prevent food borne illness; or
- 865 (iii) the following if sold without eating utensils provided by the seller:
- 866 (A) food and food ingredients sold by a seller if the seller's proper primary
- 867 classification under the 2002 North American Industry Classification System of the federal
- 868 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 869 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla

870 Manufacturing;

871 (B) food and food ingredients sold in an unheated state:

872 (I) by weight or volume; and

873 (II) as a single item; or

874 (C) a bakery item, including:

875 (I) a bagel;

876 (II) a bar;

877 (III) a biscuit;

878 (IV) bread;

879 (V) a bun;

880 (VI) a cake;

881 (VII) a cookie;

882 (VIII) a croissant;

883 (IX) a danish;

884 (X) a donut;

885 (XI) a muffin;

886 (XII) a pastry;

887 (XIII) a pie;

888 (XIV) a roll;

889 (XV) a tart;

890 (XVI) a torte; or

891 (XVII) a tortilla.

892 (c) [~~Notwithstanding Subsection (86)(a)(iii), an~~] An eating utensil provided by the
893 seller does not include the following used to transport the food:

894 (i) a container; or

895 (ii) packaging.

896 [(87)] (88) "Prescription" means an order, formula, or recipe that is issued:

897 (a) (i) orally;

898 (ii) in writing;
899 (iii) electronically; or
900 (iv) by any other manner of transmission; and
901 (b) by a licensed practitioner authorized by the laws of a state.
902 ~~[(88)]~~ (89) (a) Except as provided in Subsection ~~[(88)]~~ (89)(b)(ii) or (iii), "prewritten
903 computer software" means computer software that is not designed and developed:
904 (i) by the author or other creator of the computer software; and
905 (ii) to the specifications of a specific purchaser.
906 (b) "Prewritten computer software" includes:
907 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
908 software is not designed and developed:
909 (A) by the author or other creator of the computer software; and
910 (B) to the specifications of a specific purchaser;
911 (ii) ~~[notwithstanding Subsection (88)(a);]~~ computer software designed and developed
912 by the author or other creator of the computer software to the specifications of a specific
913 purchaser if the computer software is sold to a person other than the purchaser; or
914 (iii) ~~[notwithstanding Subsection (88)(a) and]~~ except as provided in Subsection ~~[(88)]~~
915 (89)(c), prewritten computer software or a prewritten portion of prewritten computer software:
916 (A) that is modified or enhanced to any degree; and
917 (B) if the modification or enhancement described in Subsection ~~[(88)]~~ (89)(b)(iii)(A) is
918 designed and developed to the specifications of a specific purchaser.
919 (c) ~~[Notwithstanding Subsection (88)(b)(iii), "prewritten]~~ "Prewritten computer
920 software" does not include a modification or enhancement described in Subsection ~~[(88)]~~
921 (89)(b)(iii) if the charges for the modification or enhancement are:
922 (i) reasonable; and
923 (ii) separately stated on the invoice or other statement of price provided to the
924 purchaser.
925 ~~[(89)]~~ (90) (a) "Private communication service" means a telecommunications service:

926 (i) that entitles a customer to exclusive or priority use of one or more communications
927 channels between or among termination points; and

928 (ii) regardless of the manner in which the one or more communications channels are
929 connected.

930 (b) "Private communications service" includes the following provided in connection
931 with the use of one or more communications channels:

932 (i) an extension line;

933 (ii) a station;

934 (iii) switching capacity; or

935 (iv) another associated service that is provided in connection with the use of one or
936 more communications channels as defined in Section 59-12-215.

937 ~~[(90)]~~ (91) (a) Except as provided in Subsection ~~[(90)]~~ (91)(b), "product transferred
938 electronically" means a product transferred electronically that would be subject to a tax under
939 this chapter if that product was transferred in a manner other than electronically.

940 (b) "Product transferred electronically" does not include:

941 (i) an ancillary service;

942 (ii) computer software; or

943 (iii) a telecommunications service.

944 ~~[(91)]~~ (92) (a) "Prosthetic device" means a device that is worn on or in the body to:

945 (i) artificially replace a missing portion of the body;

946 (ii) prevent or correct a physical deformity or physical malfunction; or

947 (iii) support a weak or deformed portion of the body.

948 (b) "Prosthetic device" includes:

949 (i) parts used in the repairs or renovation of a prosthetic device;

950 (ii) replacement parts for a prosthetic device;

951 (iii) a dental prosthesis; or

952 (iv) a hearing aid.

953 (c) "Prosthetic device" does not include:

954 (i) corrective eyeglasses; or
955 (ii) contact lenses.
956 [~~92~~] 93 (a) "Protective equipment" means an item:
957 (i) for human wear; and
958 (ii) that is:
959 (A) designed as protection:
960 (I) to the wearer against injury or disease; or
961 (II) against damage or injury of other persons or property; and
962 (B) not suitable for general use.
963 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
964 commission shall make rules:
965 (i) listing the items that constitute "protective equipment"; and
966 (ii) that are consistent with the list of items that constitute "protective equipment"
967 under the agreement.
968 [~~93~~] 94 (a) For purposes of Subsection 59-12-104(41), "publication" means any
969 written or printed matter, other than a photocopy:
970 (i) regardless of:
971 (A) characteristics;
972 (B) copyright;
973 (C) form;
974 (D) format;
975 (E) method of reproduction; or
976 (F) source; and
977 (ii) made available in printed or electronic format.
978 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
979 commission may by rule define the term "photocopy."
980 [~~94~~] 95 (a) "Purchase price" and "sales price" mean the total amount of
981 consideration:

- 982 (i) valued in money; and
- 983 (ii) for which tangible personal property, a product transferred electronically, or
- 984 services are:
 - 985 (A) sold;
 - 986 (B) leased; or
 - 987 (C) rented.
- 988 (b) "Purchase price" and "sales price" include:
 - 989 (i) the seller's cost of the tangible personal property, a product transferred
 - 990 electronically, or services sold;
 - 991 (ii) expenses of the seller, including:
 - 992 (A) the cost of materials used;
 - 993 (B) a labor cost;
 - 994 (C) a service cost;
 - 995 (D) interest;
 - 996 (E) a loss;
 - 997 (F) the cost of transportation to the seller; or
 - 998 (G) a tax imposed on the seller;
 - 999 (iii) a charge by the seller for any service necessary to complete the sale; or
 - 1000 (iv) consideration a seller receives from a person other than the purchaser if:
 - 1001 (A) (I) the seller actually receives consideration from a person other than the purchaser;
 - 1002 and
 - 1003 (II) the consideration described in Subsection [~~(94)~~] (95)(b)(iv)(A)(I) is directly related
 - 1004 to a price reduction or discount on the sale;
 - 1005 (B) the seller has an obligation to pass the price reduction or discount through to the
 - 1006 purchaser;
 - 1007 (C) the amount of the consideration attributable to the sale is fixed and determinable by
 - 1008 the seller at the time of the sale to the purchaser; and
 - 1009 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the

1010 seller to claim a price reduction or discount; and

1011 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,

1012 coupon, or other documentation with the understanding that the person other than the seller

1013 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

1014 (II) the purchaser identifies that purchaser to the seller as a member of a group or

1015 organization allowed a price reduction or discount, except that a preferred customer card that is

1016 available to any patron of a seller does not constitute membership in a group or organization

1017 allowed a price reduction or discount; or

1018 (III) the price reduction or discount is identified as a third party price reduction or

1019 discount on the:

1020 (Aa) invoice the purchaser receives; or

1021 (Bb) certificate, coupon, or other documentation the purchaser presents.

1022 (c) "Purchase price" and "sales price" do not include:

1023 (i) a discount:

1024 (A) in a form including:

1025 (I) cash;

1026 (II) term; or

1027 (III) coupon;

1028 (B) that is allowed by a seller;

1029 (C) taken by a purchaser on a sale; and

1030 (D) that is not reimbursed by a third party; or

1031 (ii) the following if separately stated on an invoice, bill of sale, or similar document

1032 provided to the purchaser:

1033 (A) the following from credit extended on the sale of tangible personal property or

1034 services:

1035 (I) a carrying charge;

1036 (II) a financing charge; or

1037 (III) an interest charge;

- 1038 (B) a delivery charge;
- 1039 (C) an installation charge;
- 1040 (D) a manufacturer rebate on a motor vehicle; or
- 1041 (E) a tax or fee legally imposed directly on the consumer.
- 1042 [~~95~~] (96) "Purchaser" means a person to whom:
- 1043 (a) a sale of tangible personal property is made;
- 1044 (b) a product is transferred electronically; or
- 1045 (c) a service is furnished.
- 1046 [~~96~~] (97) "Regularly rented" means:
- 1047 (a) rented to a guest for value three or more times during a calendar year; or
- 1048 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 1049 value.
- 1050 [~~97~~] (98) "Rental" is as defined in Subsection [~~54~~] (55).
- 1051 [~~98~~] (99) (a) Except as provided in Subsection [~~98~~] (99)(b), "repairs or renovations
- 1052 of tangible personal property" means:
- 1053 (i) a repair or renovation of tangible personal property that is not permanently attached
- 1054 to real property; or
- 1055 (ii) attaching tangible personal property or a product transferred electronically to other
- 1056 tangible personal property or detaching tangible personal property or a product transferred
- 1057 electronically from other tangible personal property if:
- 1058 (A) the other tangible personal property to which the tangible personal property or
- 1059 product transferred electronically is attached or from which the tangible personal property or
- 1060 product transferred electronically is detached is not permanently attached to real property; and
- 1061 (B) the attachment of tangible personal property or a product transferred electronically
- 1062 to other tangible personal property or detachment of tangible personal property or a product
- 1063 transferred electronically from other tangible personal property is made in conjunction with a
- 1064 repair or replacement of tangible personal property or a product transferred electronically.
- 1065 (b) "Repairs or renovations of tangible personal property" does not include:

1066 (i) attaching prewritten computer software to other tangible personal property if the
1067 other tangible personal property to which the prewritten computer software is attached is not
1068 permanently attached to real property; or

1069 (ii) detaching prewritten computer software from other tangible personal property if the
1070 other tangible personal property from which the prewritten computer software is detached is
1071 not permanently attached to real property.

1072 [~~(99)~~] (100) "Research and development" means the process of inquiry or
1073 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
1074 process of preparing those devices, technologies, or applications for marketing.

1075 [~~(100)~~] (101) (a) "Residential telecommunications services" means a
1076 telecommunications service or an ancillary service that is provided to an individual for personal
1077 use:

1078 (i) at a residential address; or

1079 (ii) at an institution, including a nursing home or a school, if the telecommunications
1080 service or ancillary service is provided to and paid for by the individual residing at the
1081 institution rather than the institution.

1082 (b) For purposes of Subsection [~~(100)~~] (101)(a)(i), a residential address includes an:

1083 (i) apartment; or

1084 (ii) other individual dwelling unit.

1085 [~~(101)~~] (102) "Residential use" means the use in or around a home, apartment building,
1086 sleeping quarters, and similar facilities or accommodations.

1087 [~~(102)~~] (103) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
1088 other than:

1089 (a) resale;

1090 (b) sublease; or

1091 (c) subrent.

1092 [~~(103)~~] (104) (a) "Retailer" means any person engaged in a regularly organized
1093 business in tangible personal property or any other taxable transaction under Subsection

1094 59-12-103(1), and who is selling to the user or consumer and not for resale.

1095 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1096 engaged in the business of selling to users or consumers within the state.

1097 [~~(104)~~] (105) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1098 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1099 Subsection 59-12-103(1), for consideration.

1100 (b) "Sale" includes:

1101 (i) installment and credit sales;

1102 (ii) any closed transaction constituting a sale;

1103 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
1104 chapter;

1105 (iv) any transaction if the possession of property is transferred but the seller retains the
1106 title as security for the payment of the price; and

1107 (v) any transaction under which right to possession, operation, or use of any article of
1108 tangible personal property is granted under a lease or contract and the transfer of possession
1109 would be taxable if an outright sale were made.

1110 [~~(105)~~] (106) "Sale at retail" is as defined in Subsection [~~(102)~~] (103).

1111 [~~(106)~~] (107) "Sale-leaseback transaction" means a transaction by which title to
1112 tangible personal property or a product transferred electronically that is subject to a tax under
1113 this chapter is transferred:

1114 (a) by a purchaser-lessee;

1115 (b) to a lessor;

1116 (c) for consideration; and

1117 (d) if:

1118 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
1119 of the tangible personal property or product transferred electronically;

1120 (ii) the sale of the tangible personal property or product transferred electronically to the
1121 lessor is intended as a form of financing:

- 1122 (A) for the tangible personal property or product transferred electronically; and
- 1123 (B) to the purchaser-lessee; and
- 1124 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1125 is required to:
 - 1126 (A) capitalize the tangible personal property or product transferred electronically for
 - 1127 financial reporting purposes; and
 - 1128 (B) account for the lease payments as payments made under a financing arrangement.
- 1129 [~~(107)~~] (108) "Sales price" is as defined in Subsection [~~(94)~~] (95).
- 1130 [~~(108)~~] (109) (a) "Sales relating to schools" means the following sales by, amounts
- 1131 paid to, or amounts charged by a school:
 - 1132 (i) sales that are directly related to the school's educational functions or activities
 - 1133 including:
 - 1134 (A) the sale of:
 - 1135 (I) textbooks;
 - 1136 (II) textbook fees;
 - 1137 (III) laboratory fees;
 - 1138 (IV) laboratory supplies; or
 - 1139 (V) safety equipment;
 - 1140 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
 - 1141 that:
 - 1142 (I) a student is specifically required to wear as a condition of participation in a
 - 1143 school-related event or school-related activity; and
 - 1144 (II) is not readily adaptable to general or continued usage to the extent that it takes the
 - 1145 place of ordinary clothing;
 - 1146 (C) sales of the following if the net or gross revenues generated by the sales are
 - 1147 deposited into a school district fund or school fund dedicated to school meals:
 - 1148 (I) food and food ingredients; or
 - 1149 (II) prepared food; or

- 1150 (D) transportation charges for official school activities; or
- 1151 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 1152 event or school-related activity.
- 1153 (b) "Sales relating to schools" does not include:
- 1154 (i) bookstore sales of items that are not educational materials or supplies;
- 1155 (ii) except as provided in Subsection [~~(108)~~] (109)(a)(i)(B):
- 1156 (A) clothing;
- 1157 (B) clothing accessories or equipment;
- 1158 (C) protective equipment; or
- 1159 (D) sports or recreational equipment; or
- 1160 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 1161 event or school-related activity if the amounts paid or charged are passed through to a person:
- 1162 (A) other than a:
- 1163 (I) school;
- 1164 (II) nonprofit organization authorized by a school board or a governing body of a
- 1165 private school to organize and direct a competitive secondary school activity; or
- 1166 (III) nonprofit association authorized by a school board or a governing body of a
- 1167 private school to organize and direct a competitive secondary school activity; and
- 1168 (B) that is required to collect sales and use taxes under this chapter.
- 1169 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1170 commission may make rules defining the term "passed through."
- 1171 [~~(109)~~] (110) For purposes of this section and Section 59-12-104, "school":
- 1172 (a) means:
- 1173 (i) an elementary school or a secondary school that:
- 1174 (A) is a:
- 1175 (I) public school; or
- 1176 (II) private school; and
- 1177 (B) provides instruction for one or more grades kindergarten through 12; or

- 1178 (ii) a public school district; and
- 1179 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 1180 [~~(H0)~~] (111) "Seller" means a person that makes a sale, lease, or rental of:
- 1181 (a) tangible personal property;
- 1182 (b) a product transferred electronically; or
- 1183 (c) a service.
- 1184 [~~(H1)~~] (112) (a) "Semiconductor fabricating, processing, research, or development
- 1185 materials" means tangible personal property or a product transferred electronically if the
- 1186 tangible personal property or product transferred electronically is:
- 1187 (i) used primarily in the process of:
- 1188 (A) (I) manufacturing a semiconductor;
- 1189 (II) fabricating a semiconductor; or
- 1190 (III) research or development of a:
- 1191 (Aa) semiconductor; or
- 1192 (Bb) semiconductor manufacturing process; or
- 1193 (B) maintaining an environment suitable for a semiconductor; or
- 1194 (ii) consumed primarily in the process of:
- 1195 (A) (I) manufacturing a semiconductor;
- 1196 (II) fabricating a semiconductor; or
- 1197 (III) research or development of a:
- 1198 (Aa) semiconductor; or
- 1199 (Bb) semiconductor manufacturing process; or
- 1200 (B) maintaining an environment suitable for a semiconductor.
- 1201 (b) "Semiconductor fabricating, processing, research, or development materials"
- 1202 includes:
- 1203 (i) parts used in the repairs or renovations of tangible personal property or a product
- 1204 transferred electronically described in Subsection [~~(H1)~~] (112)(a); or
- 1205 (ii) a chemical, catalyst, or other material used to:

1206 (A) produce or induce in a semiconductor a:
1207 (I) chemical change; or
1208 (II) physical change;
1209 (B) remove impurities from a semiconductor; or
1210 (C) improve the marketable condition of a semiconductor.
1211 [~~(H2)~~] (113) "Senior citizen center" means a facility having the primary purpose of
1212 providing services to the aged as defined in Section 62A-3-101.
1213 [~~(H3)~~] (114) "Simplified electronic return" means the electronic return:
1214 (a) described in Section 318(C) of the agreement; and
1215 (b) approved by the governing board of the agreement.
1216 [~~(H4)~~] (115) "Solar energy" means the sun used as the sole source of energy for
1217 producing electricity.
1218 [~~(H5)~~] (116) (a) "Sports or recreational equipment" means an item:
1219 (i) designed for human use; and
1220 (ii) that is:
1221 (A) worn in conjunction with:
1222 (I) an athletic activity; or
1223 (II) a recreational activity; and
1224 (B) not suitable for general use.
1225 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1226 commission shall make rules:
1227 (i) listing the items that constitute "sports or recreational equipment"; and
1228 (ii) that are consistent with the list of items that constitute "sports or recreational
1229 equipment" under the agreement.
1230 [~~(H6)~~] (117) "State" means the state of Utah, its departments, and agencies.
1231 [~~(H7)~~] (118) "Storage" means any keeping or retention of tangible personal property or
1232 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose
1233 except sale in the regular course of business.

1234 [~~(118)~~] (119) (a) Except as provided in Subsection [~~(118)~~] (119)(d) or (e), "tangible
1235 personal property" means personal property that:
1236 (i) may be:
1237 (A) seen;
1238 (B) weighed;
1239 (C) measured;
1240 (D) felt; or
1241 (E) touched; or
1242 (ii) is in any manner perceptible to the senses.
1243 (b) "Tangible personal property" includes:
1244 (i) electricity;
1245 (ii) water;
1246 (iii) gas;
1247 (iv) steam; or
1248 (v) prewritten computer software, regardless of the manner in which the prewritten
1249 computer software is transferred.
1250 (c) "Tangible personal property" includes the following regardless of whether the item
1251 is attached to real property:
1252 (i) a dishwasher;
1253 (ii) a dryer;
1254 (iii) a freezer;
1255 (iv) a microwave;
1256 (v) a refrigerator;
1257 (vi) a stove;
1258 (vii) a washer; or
1259 (viii) an item similar to Subsections [~~(118)~~] (119)(c)(i) through (vii) as determined by
1260 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1261 Rulemaking Act.

1262 (d) "Tangible personal property" does not include a product that is transferred
1263 electronically.

1264 (e) "Tangible personal property" does not include the following if attached to real
1265 property, regardless of whether the attachment to real property is only through a line that
1266 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
1267 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
1268 Rulemaking Act:

- 1269 (i) a hot water heater;
- 1270 (ii) a water filtration system; or
- 1271 (iii) a water softener system.

1272 [~~(119)~~] (120) (a) "Telecommunications enabling or facilitating equipment, machinery,
1273 or software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or
1274 leased primarily to enable or facilitate one or more of the following to function:

- 1275 (i) telecommunications switching or routing equipment, machinery, or software; or
- 1276 (ii) telecommunications transmission equipment, machinery, or software.

1277 (b) The following apply to Subsection [~~(119)~~] (120)(a):

- 1278 (i) a pole;
- 1279 (ii) software;
- 1280 (iii) a supplementary power supply;
- 1281 (iv) temperature or environmental equipment or machinery;
- 1282 (v) test equipment;
- 1283 (vi) a tower; or

1284 (vii) equipment, machinery, or software that functions similarly to an item listed in
1285 Subsections [~~(119)~~] (120)(b)(i) through (vi) as determined by the commission by rule made in
1286 accordance with Subsection [~~(119)~~] (120)(c).

1287 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1288 commission may by rule define what constitutes equipment, machinery, or software that
1289 functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (vi).

1290 [~~(120)~~] (121) "Telecommunications equipment, machinery, or software required for
1291 911 service" means equipment, machinery, or software that is required to comply with 47
1292 C.F.R. Sec. 20.18.

1293 [~~(121)~~] (122) "Telecommunications maintenance or repair equipment, machinery, or
1294 software" means equipment, machinery, or software purchased or leased primarily to maintain
1295 or repair one or more of the following, regardless of whether the equipment, machinery, or
1296 software is purchased or leased as a spare part or as an upgrade or modification to one or more
1297 of the following:

- 1298 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 1299 (b) telecommunications switching or routing equipment, machinery, or software; or
- 1300 (c) telecommunications transmission equipment, machinery, or software.

1301 [~~(122)~~] (123) (a) "Telecommunications service" means the electronic conveyance,
1302 routing, or transmission of audio, data, video, voice, or any other information or signal to a
1303 point, or among or between points.

1304 (b) "Telecommunications service" includes:

1305 (i) an electronic conveyance, routing, or transmission with respect to which a computer
1306 processing application is used to act:

- 1307 (A) on the code, form, or protocol of the content;
- 1308 (B) for the purpose of electronic conveyance, routing, or transmission; and
- 1309 (C) regardless of whether the service:

1310 (I) is referred to as voice over Internet protocol service; or

1311 (II) is classified by the Federal Communications Commission as enhanced or value
1312 added;

1313 (ii) an 800 service;

1314 (iii) a 900 service;

1315 (iv) a fixed wireless service;

1316 (v) a mobile wireless service;

1317 (vi) a postpaid calling service;

- 1318 (vii) a prepaid calling service;
- 1319 (viii) a prepaid wireless calling service; or
- 1320 (ix) a private communications service.
- 1321 (c) "Telecommunications service" does not include:
- 1322 (i) advertising, including directory advertising;
- 1323 (ii) an ancillary service;
- 1324 (iii) a billing and collection service provided to a third party;
- 1325 (iv) a data processing and information service if:
- 1326 (A) the data processing and information service allows data to be:
- 1327 (I) (Aa) acquired;
- 1328 (Bb) generated;
- 1329 (Cc) processed;
- 1330 (Dd) retrieved; or
- 1331 (Ee) stored; and
- 1332 (II) delivered by an electronic transmission to a purchaser; and
- 1333 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 1334 or information;
- 1335 (v) installation or maintenance of the following on a customer's premises:
- 1336 (A) equipment; or
- 1337 (B) wiring;
- 1338 (vi) Internet access service;
- 1339 (vii) a paging service;
- 1340 (viii) a product transferred electronically, including:
- 1341 (A) music;
- 1342 (B) reading material;
- 1343 (C) a ring tone;
- 1344 (D) software; or
- 1345 (E) video;

- 1346 (ix) a radio and television audio and video programming service:
- 1347 (A) regardless of the medium; and
- 1348 (B) including:
 - 1349 (I) furnishing conveyance, routing, or transmission of a television audio and video
 - 1350 programming service by a programming service provider;
 - 1351 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
 - 1352 (III) audio and video programming services delivered by a commercial mobile radio
 - 1353 service provider as defined in 47 C.F.R. Sec. 20.3;
 - 1354 (x) a value-added nonvoice data service; or
 - 1355 (xi) tangible personal property.
- 1356 [~~(123)~~] (124) (a) "Telecommunications service provider" means a person that:
 - 1357 (i) owns, controls, operates, or manages a telecommunications service; and
 - 1358 (ii) engages in an activity described in Subsection [~~(123)~~] (124)(a)(i) for the shared use
 - 1359 with or resale to any person of the telecommunications service.
- 1360 (b) A person described in Subsection [~~(123)~~] (124)(a) is a telecommunications service
- 1361 provider whether or not the Public Service Commission of Utah regulates:
 - 1362 (i) that person; or
 - 1363 (ii) the telecommunications service that the person owns, controls, operates, or
 - 1364 manages.
- 1365 [~~(124)~~] (125) (a) "Telecommunications switching or routing equipment, machinery, or
- 1366 software" means an item listed in Subsection [~~(124)~~] (125)(b) if that item is purchased or
- 1367 leased primarily for switching or routing:
 - 1368 (i) an ancillary service;
 - 1369 (ii) data communications;
 - 1370 (iii) voice communications; or
 - 1371 (iv) telecommunications service.
- 1372 (b) The following apply to Subsection [~~(124)~~] (125)(a):
 - 1373 (i) a bridge;

- 1374 (ii) a computer;
- 1375 (iii) a cross connect;
- 1376 (iv) a modem;
- 1377 (v) a multiplexer;
- 1378 (vi) plug in circuitry;
- 1379 (vii) a router;
- 1380 (viii) software;
- 1381 (ix) a switch; or
- 1382 (x) equipment, machinery, or software that functions similarly to an item listed in

1383 Subsections [~~(124)~~] (125)(b)(i) through (ix) as determined by the commission by rule made in
1384 accordance with Subsection [~~(124)~~] (125)(c).

1385 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1386 commission may by rule define what constitutes equipment, machinery, or software that
1387 functions similarly to an item listed in Subsections [~~(124)~~] (125)(b)(i) through (ix).

1388 [~~(125)~~] (126) (a) "Telecommunications transmission equipment, machinery, or
1389 software" means an item listed in Subsection [~~(125)~~] (126)(b) if that item is purchased or
1390 leased primarily for sending, receiving, or transporting:

- 1391 (i) an ancillary service;
- 1392 (ii) data communications;
- 1393 (iii) voice communications; or
- 1394 (iv) telecommunications service.

1395 (b) The following apply to Subsection [~~(125)~~] (126)(a):

- 1396 (i) an amplifier;
- 1397 (ii) a cable;
- 1398 (iii) a closure;
- 1399 (iv) a conduit;
- 1400 (v) a controller;
- 1401 (vi) a duplexer;

- 1402 (vii) a filter;
- 1403 (viii) an input device;
- 1404 (ix) an input/output device;
- 1405 (x) an insulator;
- 1406 (xi) microwave machinery or equipment;
- 1407 (xii) an oscillator;
- 1408 (xiii) an output device;
- 1409 (xiv) a pedestal;
- 1410 (xv) a power converter;
- 1411 (xvi) a power supply;
- 1412 (xvii) a radio channel;
- 1413 (xviii) a radio receiver;
- 1414 (xix) a radio transmitter;
- 1415 (xx) a repeater;
- 1416 (xxi) software;
- 1417 (xxii) a terminal;
- 1418 (xxiii) a timing unit;
- 1419 (xxiv) a transformer;
- 1420 (xxv) a wire; or
- 1421 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 1422 Subsections [~~(125)~~] (126)(b)(i) through (xxv) as determined by the commission by rule made in
- 1423 accordance with Subsection [~~(125)~~] (126)(c).
- 1424 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1425 commission may by rule define what constitutes equipment, machinery, or software that
- 1426 functions similarly to an item listed in Subsections [~~(125)~~] (126)(b)(i) through (xxv).
- 1427 [~~(126)~~] (127) (a) "Textbook for a higher education course" means a textbook or other
- 1428 printed material that is required for a course:
- 1429 (i) offered by an institution of higher education; and

1430 (ii) that the purchaser of the textbook or other printed material attends or will attend.

1431 (b) "Textbook for a higher education course" includes a textbook in electronic format.

1432 [~~(127)~~] (128) "Tobacco" means:

1433 (a) a cigarette;

1434 (b) a cigar;

1435 (c) chewing tobacco;

1436 (d) pipe tobacco; or

1437 (e) any other item that contains tobacco.

1438 [~~(128)~~] (129) "Unassisted amusement device" means an amusement device, skill

1439 device, or ride device that is started and stopped by the purchaser or renter of the right to use or

1440 operate the amusement device, skill device, or ride device.

1441 [~~(129)~~] (130) (a) "Use" means the exercise of any right or power over tangible personal

1442 property, a product transferred electronically, or a service under Subsection 59-12-103(1),

1443 incident to the ownership or the leasing of that tangible personal property, product transferred

1444 electronically, or service.

1445 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal

1446 property, a product transferred electronically, or a service in the regular course of business and

1447 held for resale.

1448 [~~(130)~~] (131) "Value-added nonvoice data service" means a service:

1449 (a) that otherwise meets the definition of a telecommunications service except that a

1450 computer processing application is used to act primarily for a purpose other than conveyance,

1451 routing, or transmission; and

1452 (b) with respect to which a computer processing application is used to act on data or

1453 information:

1454 (i) code;

1455 (ii) content;

1456 (iii) form; or

1457 (iv) protocol.

1458 [~~(131)~~] (132) (a) Subject to Subsection [~~(131)~~] (132)(b), "vehicle" means the following
1459 that are required to be titled, registered, or titled and registered:

- 1460 (i) an aircraft as defined in Section 72-10-102;
- 1461 (ii) a vehicle as defined in Section 41-1a-102;
- 1462 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 1463 (iv) a vessel as defined in Section 41-1a-102.

1464 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:

- 1465 (i) a vehicle described in Subsection [~~(131)~~] (132)(a); or
- 1466 (ii) (A) a locomotive;
- 1467 (B) a freight car;
- 1468 (C) railroad work equipment; or
- 1469 (D) other railroad rolling stock.

1470 [~~(132)~~] (133) "Vehicle dealer" means a person engaged in the business of buying,
1471 selling, or exchanging a vehicle as defined in Subsection [~~(131)~~] (132).

1472 [~~(133)~~] (134) (a) "Vertical service" means an ancillary service that:

- 1473 (i) is offered in connection with one or more telecommunications services; and
- 1474 (ii) offers an advanced calling feature that allows a customer to:
 - 1475 (A) identify a caller; and
 - 1476 (B) manage multiple calls and call connections.

1477 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
1478 conference bridging service.

1479 [~~(134)~~] (135) (a) "Voice mail service" means an ancillary service that enables a
1480 customer to receive, send, or store a recorded message.

1481 (b) "Voice mail service" does not include a vertical service that a customer is required
1482 to have in order to utilize a voice mail service.

1483 [~~(135)~~] (136) (a) Except as provided in Subsection [~~(135)~~] (136)(b), "waste energy
1484 facility" means a facility that generates electricity:

- 1485 (i) using as the primary source of energy waste materials that would be placed in a

1486 landfill or refuse pit if it were not used to generate electricity, including:

1487 (A) tires;

1488 (B) waste coal;

1489 (C) oil shale; or

1490 (D) municipal solid waste; and

1491 (ii) in amounts greater than actually required for the operation of the facility.

1492 (b) "Waste energy facility" does not include a facility that incinerates:

1493 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

1494 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

1495 [~~(136)~~] (137) "Watercraft" means a vessel as defined in Section 73-18-2.

1496 [~~(137)~~] (138) "Wind energy" means wind used as the sole source of energy to produce
1497 electricity.

1498 [~~(138)~~] (139) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
1499 geographic location by the United States Postal Service.

1500 Section 2. Section **59-12-102 (Effective 07/01/14)** is amended to read:

1501 **59-12-102 (Effective 07/01/14). Definitions.**

1502 As used in this chapter:

1503 (1) "800 service" means a telecommunications service that:

1504 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

1505 (b) is typically marketed:

1506 (i) under the name 800 toll-free calling;

1507 (ii) under the name 855 toll-free calling;

1508 (iii) under the name 866 toll-free calling;

1509 (iv) under the name 877 toll-free calling;

1510 (v) under the name 888 toll-free calling; or

1511 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the

1512 Federal Communications Commission.

1513 (2) (a) "900 service" means an inbound toll telecommunications service that:

- 1514 (i) a subscriber purchases;
- 1515 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
- 1516 the subscriber's:
- 1517 (A) prerecorded announcement; or
- 1518 (B) live service; and
- 1519 (iii) is typically marketed:
- 1520 (A) under the name 900 service; or
- 1521 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal
- 1522 Communications Commission.
- 1523 (b) "900 service" does not include a charge for:
- 1524 (i) a collection service a seller of a telecommunications service provides to a
- 1525 subscriber; or
- 1526 (ii) the following a subscriber sells to the subscriber's customer:
- 1527 (A) a product; or
- 1528 (B) a service.
- 1529 (3) (a) "Admission or user fees" includes season passes.
- 1530 (b) "Admission or user fees" does not include annual membership dues to private
- 1531 organizations.
- 1532 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
- 1533 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
- 1534 Agreement after November 12, 2002.
- 1535 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 1536 (a) listed under Subsection (6); and
- 1537 (b) that are imposed within a local taxing jurisdiction.
- 1538 (6) "Agreement sales and use tax" means a tax imposed under:
- 1539 (a) Subsection 59-12-103(2)(a)(i)(A);
- 1540 (b) Subsection 59-12-103(2)(b)(i);
- 1541 (c) Subsection 59-12-103(2)(c)(i);

- 1542 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 1543 (e) Section 59-12-204;
- 1544 (f) Section 59-12-401;
- 1545 (g) Section 59-12-402;
- 1546 (h) Section 59-12-703;
- 1547 (i) Section 59-12-802;
- 1548 (j) Section 59-12-804;
- 1549 (k) Section 59-12-1102;
- 1550 (l) Section 59-12-1302;
- 1551 (m) Section 59-12-1402;
- 1552 (n) Section 59-12-1802;
- 1553 (o) Section 59-12-2003;
- 1554 (p) Section 59-12-2103;
- 1555 (q) Section 59-12-2213;
- 1556 (r) Section 59-12-2214;
- 1557 (s) Section 59-12-2215;
- 1558 (t) Section 59-12-2216;
- 1559 (u) Section 59-12-2217; or
- 1560 (v) Section 59-12-2218.
- 1561 (7) "Aircraft" is as defined in Section 72-10-102.
- 1562 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 1563 (a) except for:
- 1564 (i) an airline as defined in Section 59-2-102; or
- 1565 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 1566 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 1567 state, of an airline; and
- 1568 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 1569 whether the business entity performs the following in this state:

- 1570 (i) check, diagnose, overhaul, and repair:
- 1571 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 1572 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 1573 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 1574 engine;
- 1575 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 1576 aircraft:
- 1577 (A) an inspection;
- 1578 (B) a repair, including a structural repair or modification;
- 1579 (C) changing landing gear; and
- 1580 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 1581 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 1582 completely apply new paint to the fixed wing turbine powered aircraft; and
- 1583 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 1584 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 1585 authority that certifies the fixed wing turbine powered aircraft.
- 1586 (9) "Alcoholic beverage" means a beverage that:
- 1587 (a) is suitable for human consumption; and
- 1588 (b) contains .5% or more alcohol by volume.
- 1589 (10) "Alternative energy" means:
- 1590 (a) biomass energy;
- 1591 (b) geothermal energy;
- 1592 (c) hydroelectric energy;
- 1593 (d) solar energy;
- 1594 (e) wind energy; or
- 1595 (f) energy that is derived from:
- 1596 (i) coal-to-liquids;
- 1597 (ii) nuclear fuel;

- 1598 (iii) oil-impregnated diatomaceous earth;
- 1599 (iv) oil sands;
- 1600 (v) oil shale; or
- 1601 (vi) petroleum coke.
- 1602 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production
- 1603 facility" means a facility that:
 - 1604 (i) uses alternative energy to produce electricity; and
 - 1605 (ii) has a production capacity of 2 megawatts or greater.
- 1606 (b) A facility is an alternative energy electricity production facility regardless of
- 1607 whether the facility is:
 - 1608 (i) connected to an electric grid; or
 - 1609 (ii) located on the premises of an electricity consumer.
- 1610 (12) (a) "Ancillary service" means a service associated with, or incidental to, the
- 1611 provision of telecommunications service.
 - 1612 (b) "Ancillary service" includes:
 - 1613 (i) a conference bridging service;
 - 1614 (ii) a detailed communications billing service;
 - 1615 (iii) directory assistance;
 - 1616 (iv) a vertical service; or
 - 1617 (v) a voice mail service.
 - 1618 (13) "Area agency on aging" is as defined in Section 62A-3-101.
 - 1619 (14) "Assisted amusement device" means an amusement device, skill device, or ride
 - 1620 device that is started and stopped by an individual:
 - 1621 (a) who is not the purchaser or renter of the right to use or operate the amusement
 - 1622 device, skill device, or ride device; and
 - 1623 (b) at the direction of the seller of the right to use the amusement device, skill device,
 - 1624 or ride device.
 - 1625 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or

1626 washing of tangible personal property if the cleaning or washing labor is primarily performed
1627 by an individual:

1628 (a) who is not the purchaser of the cleaning or washing of the tangible personal
1629 property; and

1630 (b) at the direction of the seller of the cleaning or washing of the tangible personal
1631 property.

1632 (16) "Authorized carrier" means:

1633 (a) in the case of vehicles operated over public highways, the holder of credentials
1634 indicating that the vehicle is or will be operated pursuant to both the International Registration
1635 Plan and the International Fuel Tax Agreement;

1636 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
1637 certificate or air carrier's operating certificate; or

1638 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
1639 stock, the holder of a certificate issued by the United States Surface Transportation Board.

1640 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the
1641 following that is used as the primary source of energy to produce fuel or electricity:

1642 (i) material from a plant or tree; or

1643 (ii) other organic matter that is available on a renewable basis, including:

1644 (A) slash and brush from forests and woodlands;

1645 (B) animal waste;

1646 (C) methane produced:

1647 (I) at landfills; or

1648 (II) as a byproduct of the treatment of wastewater residuals;

1649 (D) aquatic plants; and

1650 (E) agricultural products.

1651 (b) "Biomass energy" does not include:

1652 (i) black liquor;

1653 (ii) treated woods; or

- 1654 (iii) biomass from municipal solid waste other than methane produced:
- 1655 (A) at landfills; or
- 1656 (B) as a byproduct of the treatment of wastewater residuals.
- 1657 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 1658 property, products, or services if the tangible personal property, products, or services are:
- 1659 (i) distinct and identifiable; and
- 1660 (ii) sold for one nonitemized price.
- 1661 (b) "Bundled transaction" does not include:
- 1662 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 1663 the basis of the selection by the purchaser of the items of tangible personal property included in
- 1664 the transaction;
- 1665 (ii) the sale of real property;
- 1666 (iii) the sale of services to real property;
- 1667 (iv) the retail sale of tangible personal property and a service if:
- 1668 (A) the tangible personal property:
- 1669 (I) is essential to the use of the service; and
- 1670 (II) is provided exclusively in connection with the service; and
- 1671 (B) the service is the true object of the transaction;
- 1672 (v) the retail sale of two services if:
- 1673 (A) one service is provided that is essential to the use or receipt of a second service;
- 1674 (B) the first service is provided exclusively in connection with the second service; and
- 1675 (C) the second service is the true object of the transaction;
- 1676 (vi) a transaction that includes tangible personal property or a product subject to
- 1677 taxation under this chapter and tangible personal property or a product that is not subject to
- 1678 taxation under this chapter if the:
- 1679 (A) seller's purchase price of the tangible personal property or product subject to
- 1680 taxation under this chapter is de minimis; or
- 1681 (B) seller's sales price of the tangible personal property or product subject to taxation

1682 under this chapter is de minimis; and

1683 (vii) the retail sale of tangible personal property that is not subject to taxation under

1684 this chapter and tangible personal property that is subject to taxation under this chapter if:

1685 (A) that retail sale includes:

1686 (I) food and food ingredients;

1687 (II) a drug;

1688 (III) durable medical equipment;

1689 (IV) mobility enhancing equipment;

1690 (V) an over-the-counter drug;

1691 (VI) a prosthetic device; or

1692 (VII) a medical supply; and

1693 (B) subject to Subsection (18)(f):

1694 (I) the seller's purchase price of the tangible personal property subject to taxation under

1695 this chapter is 50% or less of the seller's total purchase price of that retail sale; or

1696 (II) the seller's sales price of the tangible personal property subject to taxation under

1697 this chapter is 50% or less of the seller's total sales price of that retail sale.

1698 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a

1699 service that is distinct and identifiable does not include:

1700 (A) packaging that:

1701 (I) accompanies the sale of the tangible personal property, product, or service; and

1702 (II) is incidental or immaterial to the sale of the tangible personal property, product, or

1703 service;

1704 (B) tangible personal property, a product, or a service provided free of charge with the

1705 purchase of another item of tangible personal property, a product, or a service; or

1706 (C) an item of tangible personal property, a product, or a service included in the

1707 definition of "purchase price."

1708 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a

1709 product, or a service is provided free of charge with the purchase of another item of tangible

1710 personal property, a product, or a service if the sales price of the purchased item of tangible
1711 personal property, product, or service does not vary depending on the inclusion of the tangible
1712 personal property, product, or service provided free of charge.

1713 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
1714 does not include a price that is separately identified by tangible personal property, product, or
1715 service on the following, regardless of whether the following is in paper format or electronic
1716 format:

1717 (A) a binding sales document; or

1718 (B) another supporting sales-related document that is available to a purchaser.

1719 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
1720 supporting sales-related document that is available to a purchaser includes:

1721 (A) a bill of sale;

1722 (B) a contract;

1723 (C) an invoice;

1724 (D) a lease agreement;

1725 (E) a periodic notice of rates and services;

1726 (F) a price list;

1727 (G) a rate card;

1728 (H) a receipt; or

1729 (I) a service agreement.

1730 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
1731 property or a product subject to taxation under this chapter is de minimis if:

1732 (A) the seller's purchase price of the tangible personal property or product is 10% or
1733 less of the seller's total purchase price of the bundled transaction; or

1734 (B) the seller's sales price of the tangible personal property or product is 10% or less of
1735 the seller's total sales price of the bundled transaction.

1736 (ii) For purposes of Subsection (18)(b)(vi), a seller:

1737 (A) shall use the seller's purchase price or the seller's sales price to determine if the

1738 purchase price or sales price of the tangible personal property or product subject to taxation
1739 under this chapter is de minimis; and

1740 (B) may not use a combination of the seller's purchase price and the seller's sales price
1741 to determine if the purchase price or sales price of the tangible personal property or product
1742 subject to taxation under this chapter is de minimis.

1743 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
1744 contract to determine if the sales price of tangible personal property or a product is de minimis.

1745 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
1746 the seller's purchase price and the seller's sales price to determine if tangible personal property
1747 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
1748 price of that retail sale.

1749 (19) "Certified automated system" means software certified by the governing board of
1750 the agreement that:

1751 (a) calculates the agreement sales and use tax imposed within a local taxing
1752 jurisdiction:

1753 (i) on a transaction; and

1754 (ii) in the states that are members of the agreement;

1755 (b) determines the amount of agreement sales and use tax to remit to a state that is a
1756 member of the agreement; and

1757 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

1758 (20) "Certified service provider" means an agent certified:

1759 (a) by the governing board of the agreement; and

1760 (b) to perform all of a seller's sales and use tax functions for an agreement sales and
1761 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's
1762 own purchases.

1763 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel
1764 suitable for general use.

1765 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1766 commission shall make rules:

1767 (i) listing the items that constitute "clothing"; and

1768 (ii) that are consistent with the list of items that constitute "clothing" under the
1769 agreement.

1770 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

1771 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other
1772 fuels that does not constitute industrial use under Subsection [~~51~~] (52) or residential use
1773 under Subsection [~~101~~] (102).

1774 (24) (a) "Common carrier" means a person engaged in or transacting the business of
1775 transporting passengers, freight, merchandise, or other property for hire within this state.

1776 (b) (i) "Common carrier" does not include a person who, at the time the person is
1777 traveling to or from that person's place of employment, transports a passenger to or from the
1778 passenger's place of employment.

1779 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,
1780 Utah Administrative Rulemaking Act, the commission may make rules defining what
1781 constitutes a person's place of employment.

1782 (25) "Component part" includes:

1783 (a) poultry, dairy, and other livestock feed, and their components;

1784 (b) baling ties and twine used in the baling of hay and straw;

1785 (c) fuel used for providing temperature control of orchards and commercial
1786 greenhouses doing a majority of their business in wholesale sales, and for providing power for
1787 off-highway type farm machinery; and

1788 (d) feed, seeds, and seedlings.

1789 (26) "Computer" means an electronic device that accepts information:

1790 (a) (i) in digital form; or

1791 (ii) in a form similar to digital form; and

1792 (b) manipulates that information for a result based on a sequence of instructions.

1793 (27) "Computer software" means a set of coded instructions designed to cause:

- 1794 (a) a computer to perform a task; or
- 1795 (b) automatic data processing equipment to perform a task.
- 1796 (28) "Computer software maintenance contract" means a contract that obligates a seller
- 1797 of computer software to provide a customer with:
- 1798 (a) future updates or upgrades to computer software;
- 1799 (b) support services with respect to computer software; or
- 1800 (c) a combination of Subsections (28)(a) and (b).
- 1801 (29) (a) "Conference bridging service" means an ancillary service that links two or
- 1802 more participants of an audio conference call or video conference call.
- 1803 (b) "Conference bridging service" may include providing a telephone number as part of
- 1804 the ancillary service described in Subsection (29)(a).
- 1805 (c) "Conference bridging service" does not include a telecommunications service used
- 1806 to reach the ancillary service described in Subsection (29)(a).
- 1807 (30) "Construction materials" means any tangible personal property that will be
- 1808 converted into real property.
- 1809 (31) "Delivered electronically" means delivered to a purchaser by means other than
- 1810 tangible storage media.
- 1811 (32) (a) "Delivery charge" means a charge:
- 1812 (i) by a seller of:
- 1813 (A) tangible personal property;
- 1814 (B) a product transferred electronically; or
- 1815 (C) services; and
- 1816 (ii) for preparation and delivery of the tangible personal property, product transferred
- 1817 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
- 1818 purchaser.
- 1819 (b) "Delivery charge" includes a charge for the following:
- 1820 (i) transportation;
- 1821 (ii) shipping;

- 1822 (iii) postage;
- 1823 (iv) handling;
- 1824 (v) crating; or
- 1825 (vi) packing.
- 1826 (33) "Detailed telecommunications billing service" means an ancillary service of
- 1827 separately stating information pertaining to individual calls on a customer's billing statement.
- 1828 (34) "Dietary supplement" means a product, other than tobacco, that:
- 1829 (a) is intended to supplement the diet;
- 1830 (b) contains one or more of the following dietary ingredients:
- 1831 (i) a vitamin;
- 1832 (ii) a mineral;
- 1833 (iii) an herb or other botanical;
- 1834 (iv) an amino acid;
- 1835 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 1836 dietary intake; or
- 1837 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 1838 described in Subsections (34)(b)(i) through (v);
- 1839 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- 1840 (A) tablet form;
- 1841 (B) capsule form;
- 1842 (C) powder form;
- 1843 (D) softgel form;
- 1844 (E) gelcap form; or
- 1845 (F) liquid form; or
- 1846 (ii) [~~notwithstanding Subsection (34)(c)(i),~~] if the product is not intended for ingestion
- 1847 in a form described in Subsections (34)(c)(i)(A) through (F), is not represented:
- 1848 (A) as conventional food; and
- 1849 (B) for use as a sole item of:

- 1850 (I) a meal; or
- 1851 (II) the diet; and
- 1852 (d) is required to be labeled as a dietary supplement:
- 1853 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 1854 (ii) as required by 21 C.F.R. Sec. 101.36.
- 1855 (35) (a) "Direct mail" means printed material delivered or distributed by United States
- 1856 mail or other delivery service:
- 1857 (i) to:
- 1858 (A) a mass audience; or
- 1859 (B) addressees on a mailing list provided:
- 1860 (I) by a purchaser of the mailing list; or
- 1861 (II) at the discretion of the purchaser of the mailing list; and
- 1862 (ii) if the cost of the printed material is not billed directly to the recipients.
- 1863 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 1864 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 1865 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 1866 single address.
- 1867 (36) "Directory assistance" means an ancillary service of providing:
- 1868 (a) address information; or
- 1869 (b) telephone number information.
- 1870 (37) (a) "Disposable home medical equipment or supplies" means medical equipment
- 1871 or supplies that:
- 1872 (i) cannot withstand repeated use; and
- 1873 (ii) are purchased by, for, or on behalf of a person other than:
- 1874 (A) a health care facility as defined in Section 26-21-2;
- 1875 (B) a health care provider as defined in Section 78B-3-403;
- 1876 (C) an office of a health care provider described in Subsection (37)(a)(ii)(B); or
- 1877 (D) a person similar to a person described in Subsections (37)(a)(ii)(A) through (C).

- 1878 (b) "Disposable home medical equipment or supplies" does not include:
- 1879 (i) a drug;
- 1880 (ii) durable medical equipment;
- 1881 (iii) a hearing aid;
- 1882 (iv) a hearing aid accessory;
- 1883 (v) mobility enhancing equipment; or
- 1884 (vi) tangible personal property used to correct impaired vision, including:
- 1885 (A) eyeglasses; or
- 1886 (B) contact lenses.
- 1887 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1888 commission may by rule define what constitutes medical equipment or supplies.
- 1889 (38) (a) "Drug" means a compound, substance, or preparation, or a component of a
- 1890 compound, substance, or preparation that is:
- 1891 (i) recognized in:
- 1892 (A) the official United States Pharmacopoeia;
- 1893 (B) the official Homeopathic Pharmacopoeia of the United States;
- 1894 (C) the official National Formulary; or
- 1895 (D) a supplement to a publication listed in Subsections (38)(a)(i)(A) through (C);
- 1896 (ii) intended for use in the:
- 1897 (A) diagnosis of disease;
- 1898 (B) cure of disease;
- 1899 (C) mitigation of disease;
- 1900 (D) treatment of disease; or
- 1901 (E) prevention of disease; or
- 1902 (iii) intended to affect:
- 1903 (A) the structure of the body; or
- 1904 (B) any function of the body.
- 1905 (b) "Drug" does not include:

- 1906 (i) food and food ingredients;
- 1907 (ii) a dietary supplement;
- 1908 (iii) an alcoholic beverage; or
- 1909 (iv) a prosthetic device.
- 1910 (39) (a) Except as provided in Subsection (39)(c), "durable medical equipment" means
- 1911 equipment that:
 - 1912 (i) can withstand repeated use;
 - 1913 (ii) is primarily and customarily used to serve a medical purpose;
 - 1914 (iii) generally is not useful to a person in the absence of illness or injury; and
 - 1915 (iv) is not worn in or on the body.
- 1916 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 1917 equipment described in Subsection (39)(a).
- 1918 (c) [~~Notwithstanding Subsection (39)(a), "durable"~~] "Durable medical equipment" does
- 1919 not include mobility enhancing equipment.
- 1920 (40) "Electronic" means:
 - 1921 (a) relating to technology; and
 - 1922 (b) having:
 - 1923 (i) electrical capabilities;
 - 1924 (ii) digital capabilities;
 - 1925 (iii) magnetic capabilities;
 - 1926 (iv) wireless capabilities;
 - 1927 (v) optical capabilities;
 - 1928 (vi) electromagnetic capabilities; or
 - 1929 (vii) capabilities similar to Subsections (40)(b)(i) through (vi).
- 1930 (41) "Electronic financial payment service" means an establishment:
 - 1931 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
 - 1932 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
 - 1933 federal Executive Office of the President, Office of Management and Budget; and

- 1934 (b) that performs electronic financial payment services.
- 1935 [~~(41)~~] (42) "Employee" is as defined in Section 59-10-401.
- 1936 [~~(42)~~] (43) "Fixed guideway" means a public transit facility that uses and occupies:
- 1937 (a) rail for the use of public transit; or
- 1938 (b) a separate right-of-way for the use of public transit.
- 1939 [~~(43)~~] (44) "Fixed wing turbine powered aircraft" means an aircraft that:
- 1940 (a) is powered by turbine engines;
- 1941 (b) operates on jet fuel; and
- 1942 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 1943 [~~(44)~~] (45) "Fixed wireless service" means a telecommunications service that provides
- 1944 radio communication between fixed points.
- 1945 [~~(45)~~] (46) (a) "Food and food ingredients" means substances:
- 1946 (i) regardless of whether the substances are in:
- 1947 (A) liquid form;
- 1948 (B) concentrated form;
- 1949 (C) solid form;
- 1950 (D) frozen form;
- 1951 (E) dried form; or
- 1952 (F) dehydrated form; and
- 1953 (ii) that are:
- 1954 (A) sold for:
- 1955 (I) ingestion by humans; or
- 1956 (II) chewing by humans; and
- 1957 (B) consumed for the substance's:
- 1958 (I) taste; or
- 1959 (II) nutritional value.
- 1960 (b) "Food and food ingredients" includes an item described in Subsection [~~(86)~~]
- 1961 (87)(b)(iii).

- 1962 (c) "Food and food ingredients" does not include:
- 1963 (i) an alcoholic beverage;
- 1964 (ii) tobacco; or
- 1965 (iii) prepared food.
- 1966 [~~(46)~~ (47) (a) "Fundraising sales" means sales:
- 1967 (i) (A) made by a school; or
- 1968 (B) made by a school student;
- 1969 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 1970 materials, or provide transportation; and
- 1971 (iii) that are part of an officially sanctioned school activity.
- 1972 (b) For purposes of Subsection [~~(46)~~ (47)(a)(iii), "officially sanctioned school activity"
- 1973 means a school activity:
- 1974 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 1975 district governing the authorization and supervision of fundraising activities;
- 1976 (ii) that does not directly or indirectly compensate an individual teacher or other
- 1977 educational personnel by direct payment, commissions, or payment in kind; and
- 1978 (iii) the net or gross revenues from which are deposited in a dedicated account
- 1979 controlled by the school or school district.
- 1980 [~~(47)~~ (48) "Geothermal energy" means energy contained in heat that continuously
- 1981 flows outward from the earth that is used as the sole source of energy to produce electricity.
- 1982 [~~(48)~~ (49) "Governing board of the agreement" means the governing board of the
- 1983 agreement that is:
- 1984 (a) authorized to administer the agreement; and
- 1985 (b) established in accordance with the agreement.
- 1986 [~~(49)~~ (50) (a) For purposes of Subsection 59-12-104(41), "governmental entity"
- 1987 means:
- 1988 (i) the executive branch of the state, including all departments, institutions, boards,
- 1989 divisions, bureaus, offices, commissions, and committees;

1990 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
1991 Office of the Court Administrator, and similar administrative units in the judicial branch;
1992 (iii) the legislative branch of the state, including the House of Representatives, the
1993 Senate, the Legislative Printing Office, the Office of Legislative Research and General
1994 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
1995 Analyst;

1996 (iv) the National Guard;

1997 (v) an independent entity as defined in Section 63E-1-102; or

1998 (vi) a political subdivision as defined in Section 17B-1-102.

1999 (b) "Governmental entity" does not include the state systems of public and higher
2000 education, including:

2001 (i) a college campus of the Utah College of Applied Technology;

2002 (ii) a school;

2003 (iii) the State Board of Education;

2004 (iv) the State Board of Regents; or

2005 (v) an institution of higher education.

2006 [~~50~~] (51) "Hydroelectric energy" means water used as the sole source of energy to
2007 produce electricity.

2008 [~~51~~] (52) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,
2009 or other fuels:

2010 (a) in mining or extraction of minerals;

2011 (b) in agricultural operations to produce an agricultural product up to the time of
2012 harvest or placing the agricultural product into a storage facility, including:

2013 (i) commercial greenhouses;

2014 (ii) irrigation pumps;

2015 (iii) farm machinery;

2016 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
2017 registered under Title 41, Chapter 1a, Part 2, Registration; and

- 2018 (v) other farming activities;
- 2019 (c) in manufacturing tangible personal property at an establishment described in SIC
- 2020 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 2021 Executive Office of the President, Office of Management and Budget;
- 2022 (d) by a scrap recycler if:
- 2023 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 2024 one or more of the following items into prepared grades of processed materials for use in new
- 2025 products:
- 2026 (A) iron;
- 2027 (B) steel;
- 2028 (C) nonferrous metal;
- 2029 (D) paper;
- 2030 (E) glass;
- 2031 (F) plastic;
- 2032 (G) textile; or
- 2033 (H) rubber; and
- 2034 (ii) the new products under Subsection [~~(51)~~] (52)(d)(i) would otherwise be made with
- 2035 nonrecycled materials; or
- 2036 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 2037 cogeneration facility as defined in Section 54-2-1.
- 2038 [~~(52)~~] (53) (a) Except as provided in Subsection [~~(52)~~] (53)(b), "installation charge"
- 2039 means a charge for installing:
- 2040 (i) tangible personal property; or
- 2041 (ii) a product transferred electronically.
- 2042 (b) "Installation charge" does not include a charge for:
- 2043 (i) repairs or renovations of:
- 2044 (A) tangible personal property; or
- 2045 (B) a product transferred electronically; or

- 2046 (ii) attaching tangible personal property or a product transferred electronically:
2047 (A) to other tangible personal property; and
2048 (B) as part of a manufacturing or fabrication process.
- 2049 [~~53~~] (54) "Institution of higher education" means an institution of higher education
2050 listed in Section 53B-2-101.
- 2051 [~~54~~] (55) (a) "Lease" or "rental" means a transfer of possession or control of tangible
2052 personal property or a product transferred electronically for:
2053 (i) (A) a fixed term; or
2054 (B) an indeterminate term; and
2055 (ii) consideration.
- 2056 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
2057 amount of consideration may be increased or decreased by reference to the amount realized
2058 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
2059 Code.
- 2060 (c) "Lease" or "rental" does not include:
2061 (i) a transfer of possession or control of property under a security agreement or
2062 deferred payment plan that requires the transfer of title upon completion of the required
2063 payments;
2064 (ii) a transfer of possession or control of property under an agreement that requires the
2065 transfer of title:
2066 (A) upon completion of required payments; and
2067 (B) if the payment of an option price does not exceed the greater of:
2068 (I) \$100; or
2069 (II) 1% of the total required payments; or
2070 (iii) providing tangible personal property along with an operator for a fixed period of
2071 time or an indeterminate period of time if the operator is necessary for equipment to perform as
2072 designed.
- 2073 (d) For purposes of Subsection [~~54~~] (55)(c)(iii), an operator is necessary for

2074 equipment to perform as designed if the operator's duties exceed the:

- 2075 (i) set-up of tangible personal property;
- 2076 (ii) maintenance of tangible personal property; or
- 2077 (iii) inspection of tangible personal property.

2078 [~~55~~] 56 "Life science establishment" means an establishment in this state that is
2079 classified under the following NAICS codes of the 2007 North American Industry
2080 Classification System of the federal Executive Office of the President, Office of Management
2081 and Budget:

- 2082 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- 2083 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
2084 Manufacturing; or
- 2085 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

2086 [~~56~~] 57 "Life science research and development facility" means a facility owned,
2087 leased, or rented by a life science establishment if research and development is performed in
2088 51% or more of the total area of the facility.

2089 [~~57~~] 58 "Load and leave" means delivery to a purchaser by use of a tangible storage
2090 media if the tangible storage media is not physically transferred to the purchaser.

2091 [~~58~~] 59 "Local taxing jurisdiction" means a:

- 2092 (a) county that is authorized to impose an agreement sales and use tax;
- 2093 (b) city that is authorized to impose an agreement sales and use tax; or
- 2094 (c) town that is authorized to impose an agreement sales and use tax.

2095 [~~59~~] 60 "Manufactured home" is as defined in Section 15A-1-302.

2096 [~~60~~] 61 For purposes of Section 59-12-104, "manufacturing facility" means:

2097 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
2098 Industrial Classification Manual of the federal Executive Office of the President, Office of
2099 Management and Budget;

2100 (b) a scrap recycler if:

- 2101 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process

2102 one or more of the following items into prepared grades of processed materials for use in new
2103 products:

2104 (A) iron;

2105 (B) steel;

2106 (C) nonferrous metal;

2107 (D) paper;

2108 (E) glass;

2109 (F) plastic;

2110 (G) textile; or

2111 (H) rubber; and

2112 (ii) the new products under Subsection [~~(60)~~] (61)(b)(i) would otherwise be made with
2113 nonrecycled materials; or

2114 (c) a cogeneration facility as defined in Section 54-2-1.

2115 [~~(61)~~] (62) "Member of the immediate family of the producer" means a person who is
2116 related to a producer described in Subsection 59-12-104(20)(a) as a:

2117 (a) child or stepchild, regardless of whether the child or stepchild is:

2118 (i) an adopted child or adopted stepchild; or

2119 (ii) a foster child or foster stepchild;

2120 (b) grandchild or stepgrandchild;

2121 (c) grandparent or stepgrandparent;

2122 (d) nephew or stepnephew;

2123 (e) niece or stepniece;

2124 (f) parent or stepparent;

2125 (g) sibling or stepsibling;

2126 (h) spouse;

2127 (i) person who is the spouse of a person described in Subsections [~~(61)~~] (62)(a) through
2128 (g); or

2129 (j) person similar to a person described in Subsections [~~(61)~~] (62)(a) through (i) as

2130 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
2131 Administrative Rulemaking Act.

2132 ~~[(62)]~~ (63) "Mobile home" is as defined in Section 15A-1-302.

2133 ~~[(63)]~~ (64) "Mobile telecommunications service" is as defined in the Mobile
2134 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

2135 ~~[(64)]~~ (65) (a) "Mobile wireless service" means a telecommunications service,
2136 regardless of the technology used, if:

- 2137 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 2138 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 2139 (iii) the origination point described in Subsection ~~[(64)]~~ (65)(a)(i) and the termination
2140 point described in Subsection ~~[(64)]~~ (65)(a)(ii) are not fixed.

2141 (b) "Mobile wireless service" includes a telecommunications service that is provided
2142 by a commercial mobile radio service provider.

2143 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2144 commission may by rule define "commercial mobile radio service provider."

2145 ~~[(65)]~~ (66) (a) Except as provided in Subsection ~~[(65)]~~ (66)(c), "mobility enhancing
2146 equipment" means equipment that is:

- 2147 (i) primarily and customarily used to provide or increase the ability to move from one
2148 place to another;
- 2149 (ii) appropriate for use in a:
 - 2150 (A) home; or
 - 2151 (B) motor vehicle; and
- 2152 (iii) not generally used by persons with normal mobility.

2153 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
2154 the equipment described in Subsection ~~[(65)]~~ (66)(a).

2155 (c) ~~[Notwithstanding Subsection (65)(a), "mobility]~~ "Mobility enhancing equipment"
2156 does not include:

- 2157 (i) a motor vehicle;

2158 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
2159 vehicle manufacturer;

2160 (iii) durable medical equipment; or

2161 (iv) a prosthetic device.

2162 ~~[(66)]~~ (67) "Model 1 seller" means a seller registered under the agreement that has
2163 selected a certified service provider as the seller's agent to perform all of the seller's sales and
2164 use tax functions for agreement sales and use taxes other than the seller's obligation under
2165 Section 59-12-124 to remit a tax on the seller's own purchases.

2166 ~~[(67)]~~ (68) "Model 2 seller" means a seller registered under the agreement that:

2167 (a) except as provided in Subsection ~~[(67)]~~ (68)(b), has selected a certified automated
2168 system to perform the seller's sales tax functions for agreement sales and use taxes; and

2169 (b) ~~[notwithstanding Subsection (67)(a),]~~ retains responsibility for remitting all of the
2170 sales tax:

2171 (i) collected by the seller; and

2172 (ii) to the appropriate local taxing jurisdiction.

2173 ~~[(68)]~~ (69) (a) Subject to Subsection ~~[(68)]~~ (69)(b), "model 3 seller" means a seller
2174 registered under the agreement that has:

2175 (i) sales in at least five states that are members of the agreement;

2176 (ii) total annual sales revenues of at least \$500,000,000;

2177 (iii) a proprietary system that calculates the amount of tax:

2178 (A) for an agreement sales and use tax; and

2179 (B) due to each local taxing jurisdiction; and

2180 (iv) entered into a performance agreement with the governing board of the agreement.

2181 (b) For purposes of Subsection ~~[(68)]~~ (69)(a), "model 3 seller" includes an affiliated
2182 group of sellers using the same proprietary system.

2183 ~~[(69)]~~ (70) "Model 4 seller" means a seller that is registered under the agreement and is
2184 not a model 1 seller, model 2 seller, or model 3 seller.

2185 ~~[(70)]~~ (71) "Modular home" means a modular unit as defined in Section 15A-1-302.

2186 [~~(71)~~] (72) "Motor vehicle" is as defined in Section 41-1a-102.

2187 [~~(72)~~] (73) "Oil sands" means impregnated bituminous sands that:

2188 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
2189 other hydrocarbons, or otherwise treated;

2190 (b) yield mixtures of liquid hydrocarbon; and

2191 (c) require further processing other than mechanical blending before becoming finished
2192 petroleum products.

2193 [~~(73)~~] (74) "Oil shale" means a group of fine black to dark brown shales containing
2194 kerogen material that yields petroleum upon heating and distillation.

2195 [~~(74)~~] (75) "Optional computer software maintenance contract" means a computer
2196 software maintenance contract that a customer is not obligated to purchase as a condition to the
2197 retail sale of computer software.

2198 [~~(75)~~] (76) (a) "Other fuels" means products that burn independently to produce heat or
2199 energy.

2200 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
2201 personal property.

2202 [~~(76)~~] (77) (a) "Paging service" means a telecommunications service that provides
2203 transmission of a coded radio signal for the purpose of activating a specific pager.

2204 (b) For purposes of Subsection [~~(76)~~] (77)(a), the transmission of a coded radio signal
2205 includes a transmission by message or sound.

2206 [~~(77)~~] (78) "Pawnbroker" is as defined in Section 13-32a-102.

2207 [~~(78)~~] (79) "Pawn transaction" is as defined in Section 13-32a-102.

2208 [~~(79)~~] (80) (a) "Permanently attached to real property" means that for tangible personal
2209 property attached to real property:

2210 (i) the attachment of the tangible personal property to the real property:

2211 (A) is essential to the use of the tangible personal property; and

2212 (B) suggests that the tangible personal property will remain attached to the real
2213 property in the same place over the useful life of the tangible personal property; or

2214 (ii) if the tangible personal property is detached from the real property, the detachment
2215 would:

2216 (A) cause substantial damage to the tangible personal property; or

2217 (B) require substantial alteration or repair of the real property to which the tangible
2218 personal property is attached.

2219 (b) "Permanently attached to real property" includes:

2220 (i) the attachment of an accessory to the tangible personal property if the accessory is:

2221 (A) essential to the operation of the tangible personal property; and

2222 (B) attached only to facilitate the operation of the tangible personal property;

2223 (ii) a temporary detachment of tangible personal property from real property for a
2224 repair or renovation if the repair or renovation is performed where the tangible personal
2225 property and real property are located; or

2226 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
2227 Subsection [~~(79)~~] (80)(c)(iii) or (iv).

2228 (c) "Permanently attached to real property" does not include:

2229 (i) the attachment of portable or movable tangible personal property to real property if
2230 that portable or movable tangible personal property is attached to real property only for:

2231 (A) convenience;

2232 (B) stability; or

2233 (C) for an obvious temporary purpose;

2234 (ii) the detachment of tangible personal property from real property except for the
2235 detachment described in Subsection [~~(79)~~] (80)(b)(ii);

2236 (iii) an attachment of the following tangible personal property to real property if the
2237 attachment to real property is only through a line that supplies water, electricity, gas,
2238 telecommunications, cable, or supplies a similar item as determined by the commission by rule
2239 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

2240 (A) a computer;

2241 (B) a telephone;

2242 (C) a television; or
2243 (D) tangible personal property similar to Subsections [~~(79)~~] (80)(c)(iii)(A) through (C)
2244 as determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
2245 Administrative Rulemaking Act; or
2246 (iv) an item listed in Subsection [~~(117)~~] (119)(c).
2247 [~~(80)~~] (81) "Person" includes any individual, firm, partnership, joint venture,
2248 association, corporation, estate, trust, business trust, receiver, syndicate, this state, any county,
2249 city, municipality, district, or other local governmental entity of the state, or any group or
2250 combination acting as a unit.
2251 [~~(81)~~] (82) "Place of primary use":
2252 (a) for telecommunications service other than mobile telecommunications service,
2253 means the street address representative of where the customer's use of the telecommunications
2254 service primarily occurs, which shall be:
2255 (i) the residential street address of the customer; or
2256 (ii) the primary business street address of the customer; or
2257 (b) for mobile telecommunications service, is as defined in the Mobile
2258 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
2259 [~~(82)~~] (83) (a) "Postpaid calling service" means a telecommunications service a person
2260 obtains by making a payment on a call-by-call basis:
2261 (i) through the use of a:
2262 (A) bank card;
2263 (B) credit card;
2264 (C) debit card; or
2265 (D) travel card; or
2266 (ii) by a charge made to a telephone number that is not associated with the origination
2267 or termination of the telecommunications service.
2268 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
2269 service, that would be a prepaid wireless calling service if the service were exclusively a

2270 telecommunications service.

2271 ~~[(83)]~~ (84) "Postproduction" means an activity related to the finishing or duplication of
2272 a medium described in Subsection 59-12-104(54)(a).

2273 ~~[(84)]~~ (85) "Prepaid calling service" means a telecommunications service:

2274 (a) that allows a purchaser access to telecommunications service that is exclusively
2275 telecommunications service;

2276 (b) that:

2277 (i) is paid for in advance; and

2278 (ii) enables the origination of a call using an:

2279 (A) access number; or

2280 (B) authorization code;

2281 (c) that is dialed:

2282 (i) manually; or

2283 (ii) electronically; and

2284 (d) sold in predetermined units or dollars that decline:

2285 (i) by a known amount; and

2286 (ii) with use.

2287 ~~[(85)]~~ (86) "Prepaid wireless calling service" means a telecommunications service:

2288 (a) that provides the right to utilize:

2289 (i) mobile wireless service; and

2290 (ii) other service that is not a telecommunications service, including:

2291 (A) the download of a product transferred electronically;

2292 (B) a content service; or

2293 (C) an ancillary service;

2294 (b) that:

2295 (i) is paid for in advance; and

2296 (ii) enables the origination of a call using an:

2297 (A) access number; or

- 2298 (B) authorization code;
- 2299 (c) that is dialed:
- 2300 (i) manually; or
- 2301 (ii) electronically; and
- 2302 (d) sold in predetermined units or dollars that decline:
- 2303 (i) by a known amount; and
- 2304 (ii) with use.
- 2305 [~~(86)~~] (87) (a) "Prepared food" means:
- 2306 (i) food:
- 2307 (A) sold in a heated state; or
- 2308 (B) heated by a seller;
- 2309 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 2310 item; or
- 2311 (iii) except as provided in Subsection [~~(86)~~] (87)(c), food sold with an eating utensil
- 2312 provided by the seller, including a:
- 2313 (A) plate;
- 2314 (B) knife;
- 2315 (C) fork;
- 2316 (D) spoon;
- 2317 (E) glass;
- 2318 (F) cup;
- 2319 (G) napkin; or
- 2320 (H) straw.
- 2321 (b) "Prepared food" does not include:
- 2322 (i) food that a seller only:
- 2323 (A) cuts;
- 2324 (B) repackages; or
- 2325 (C) pasteurizes; or

- 2326 (ii) (A) the following:
- 2327 (I) raw egg;
- 2328 (II) raw fish;
- 2329 (III) raw meat;
- 2330 (IV) raw poultry; or
- 2331 (V) a food containing an item described in Subsections [~~86~~] (87)(b)(ii)(A)(I) through
- 2332 (IV); and
- 2333 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 2334 Food and Drug Administration's Food Code that a consumer cook the items described in
- 2335 Subsection [~~86~~] (87)(b)(ii)(A) to prevent food borne illness; or
- 2336 (iii) the following if sold without eating utensils provided by the seller:
- 2337 (A) food and food ingredients sold by a seller if the seller's proper primary
- 2338 classification under the 2002 North American Industry Classification System of the federal
- 2339 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 2340 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 2341 Manufacturing;
- 2342 (B) food and food ingredients sold in an unheated state:
- 2343 (I) by weight or volume; and
- 2344 (II) as a single item; or
- 2345 (C) a bakery item, including:
- 2346 (I) a bagel;
- 2347 (II) a bar;
- 2348 (III) a biscuit;
- 2349 (IV) bread;
- 2350 (V) a bun;
- 2351 (VI) a cake;
- 2352 (VII) a cookie;
- 2353 (VIII) a croissant;

- 2354 (IX) a danish;
- 2355 (X) a donut;
- 2356 (XI) a muffin;
- 2357 (XII) a pastry;
- 2358 (XIII) a pie;
- 2359 (XIV) a roll;
- 2360 (XV) a tart;
- 2361 (XVI) a torte; or
- 2362 (XVII) a tortilla.
- 2363 (c) [~~Notwithstanding Subsection (86)(a)(iii), an~~] An eating utensil provided by the
- 2364 seller does not include the following used to transport the food:
 - 2365 (i) a container; or
 - 2366 (ii) packaging.
- 2367 [~~(87)~~] (88) "Prescription" means an order, formula, or recipe that is issued:
 - 2368 (a) (i) orally;
 - 2369 (ii) in writing;
 - 2370 (iii) electronically; or
 - 2371 (iv) by any other manner of transmission; and
 - 2372 (b) by a licensed practitioner authorized by the laws of a state.
- 2373 [~~(88)~~] (89) (a) Except as provided in Subsection [~~(88)~~] (89)(b)(ii) or (iii), "prewritten
- 2374 computer software" means computer software that is not designed and developed:
 - 2375 (i) by the author or other creator of the computer software; and
 - 2376 (ii) to the specifications of a specific purchaser.
- 2377 (b) "Prewritten computer software" includes:
 - 2378 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
 - 2379 software is not designed and developed:
 - 2380 (A) by the author or other creator of the computer software; and
 - 2381 (B) to the specifications of a specific purchaser;

2382 (ii) [~~notwithstanding Subsection (88)(a),~~] computer software designed and developed
2383 by the author or other creator of the computer software to the specifications of a specific
2384 purchaser if the computer software is sold to a person other than the purchaser; or

2385 (iii) [~~notwithstanding Subsection (88)(a) and~~] except as provided in Subsection [~~(88)~~
2386 (89)](c), prewritten computer software or a prewritten portion of prewritten computer software:

2387 (A) that is modified or enhanced to any degree; and

2388 (B) if the modification or enhancement described in Subsection [~~(88)~~] (89)(b)(iii)(A) is
2389 designed and developed to the specifications of a specific purchaser.

2390 (c) [~~Notwithstanding Subsection (88)(b)(iii), "prewritten~~] "Prewritten computer
2391 software" does not include a modification or enhancement described in Subsection [~~(88)~~
2392 (89)](b)(iii) if the charges for the modification or enhancement are:

2393 (i) reasonable; and

2394 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the
2395 invoice or other statement of price provided to the purchaser at the time of sale or later, as
2396 demonstrated by:

2397 (A) the books and records the seller keeps at the time of the transaction in the regular
2398 course of business, including books and records the seller keeps at the time of the transaction in
2399 the regular course of business for nontax purposes;

2400 (B) a preponderance of the facts and circumstances at the time of the transaction; and

2401 (C) the understanding of all of the parties to the transaction.

2402 [~~(89)~~] (90) (a) "Private communication service" means a telecommunications service:

2403 (i) that entitles a customer to exclusive or priority use of one or more communications
2404 channels between or among termination points; and

2405 (ii) regardless of the manner in which the one or more communications channels are
2406 connected.

2407 (b) "Private communications service" includes the following provided in connection
2408 with the use of one or more communications channels:

2409 (i) an extension line;

- 2410 (ii) a station;
- 2411 (iii) switching capacity; or
- 2412 (iv) another associated service that is provided in connection with the use of one or
- 2413 more communications channels as defined in Section 59-12-215.
- 2414 [~~90~~] (91) (a) Except as provided in Subsection [~~90~~] (91)(b), "product transferred
- 2415 electronically" means a product transferred electronically that would be subject to a tax under
- 2416 this chapter if that product was transferred in a manner other than electronically.
- 2417 (b) "Product transferred electronically" does not include:
- 2418 (i) an ancillary service;
- 2419 (ii) computer software; or
- 2420 (iii) a telecommunications service.
- 2421 [~~91~~] (92) (a) "Prosthetic device" means a device that is worn on or in the body to:
- 2422 (i) artificially replace a missing portion of the body;
- 2423 (ii) prevent or correct a physical deformity or physical malfunction; or
- 2424 (iii) support a weak or deformed portion of the body.
- 2425 (b) "Prosthetic device" includes:
- 2426 (i) parts used in the repairs or renovation of a prosthetic device;
- 2427 (ii) replacement parts for a prosthetic device;
- 2428 (iii) a dental prosthesis; or
- 2429 (iv) a hearing aid.
- 2430 (c) "Prosthetic device" does not include:
- 2431 (i) corrective eyeglasses; or
- 2432 (ii) contact lenses.
- 2433 [~~92~~] (93) (a) "Protective equipment" means an item:
- 2434 (i) for human wear; and
- 2435 (ii) that is:
- 2436 (A) designed as protection:
- 2437 (I) to the wearer against injury or disease; or

2438 (II) against damage or injury of other persons or property; and
2439 (B) not suitable for general use.
2440 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2441 commission shall make rules:
2442 (i) listing the items that constitute "protective equipment"; and
2443 (ii) that are consistent with the list of items that constitute "protective equipment"
2444 under the agreement.
2445 [~~93~~] (94) (a) For purposes of Subsection 59-12-104(41), "publication" means any
2446 written or printed matter, other than a photocopy:
2447 (i) regardless of:
2448 (A) characteristics;
2449 (B) copyright;
2450 (C) form;
2451 (D) format;
2452 (E) method of reproduction; or
2453 (F) source; and
2454 (ii) made available in printed or electronic format.
2455 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2456 commission may by rule define the term "photocopy."
2457 [~~94~~] (95) (a) "Purchase price" and "sales price" mean the total amount of
2458 consideration:
2459 (i) valued in money; and
2460 (ii) for which tangible personal property, a product transferred electronically, or
2461 services are:
2462 (A) sold;
2463 (B) leased; or
2464 (C) rented.
2465 (b) "Purchase price" and "sales price" include:

- 2466 (i) the seller's cost of the tangible personal property, a product transferred
- 2467 electronically, or services sold;
- 2468 (ii) expenses of the seller, including:
- 2469 (A) the cost of materials used;
- 2470 (B) a labor cost;
- 2471 (C) a service cost;
- 2472 (D) interest;
- 2473 (E) a loss;
- 2474 (F) the cost of transportation to the seller; or
- 2475 (G) a tax imposed on the seller;
- 2476 (iii) a charge by the seller for any service necessary to complete the sale; or
- 2477 (iv) consideration a seller receives from a person other than the purchaser if:
- 2478 (A) (I) the seller actually receives consideration from a person other than the purchaser;
- 2479 and
- 2480 (II) the consideration described in Subsection [~~94~~] 95(b)(iv)(A)(I) is directly related
- 2481 to a price reduction or discount on the sale;
- 2482 (B) the seller has an obligation to pass the price reduction or discount through to the
- 2483 purchaser;
- 2484 (C) the amount of the consideration attributable to the sale is fixed and determinable by
- 2485 the seller at the time of the sale to the purchaser; and
- 2486 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
- 2487 seller to claim a price reduction or discount; and
- 2488 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
- 2489 coupon, or other documentation with the understanding that the person other than the seller
- 2490 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
- 2491 (II) the purchaser identifies that purchaser to the seller as a member of a group or
- 2492 organization allowed a price reduction or discount, except that a preferred customer card that is
- 2493 available to any patron of a seller does not constitute membership in a group or organization

2494 allowed a price reduction or discount; or
2495 (III) the price reduction or discount is identified as a third party price reduction or
2496 discount on the:
2497 (Aa) invoice the purchaser receives; or
2498 (Bb) certificate, coupon, or other documentation the purchaser presents.
2499 (c) "Purchase price" and "sales price" do not include:
2500 (i) a discount:
2501 (A) in a form including:
2502 (I) cash;
2503 (II) term; or
2504 (III) coupon;
2505 (B) that is allowed by a seller;
2506 (C) taken by a purchaser on a sale; and
2507 (D) that is not reimbursed by a third party; or
2508 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
2509 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
2510 sale or later, as demonstrated by the books and records the seller keeps at the time of the
2511 transaction in the regular course of business, including books and records the seller keeps at the
2512 time of the transaction in the regular course of business for nontax purposes, by a
2513 preponderance of the facts and circumstances at the time of the transaction, and by the
2514 understanding of all of the parties to the transaction:
2515 (A) the following from credit extended on the sale of tangible personal property or
2516 services:
2517 (I) a carrying charge;
2518 (II) a financing charge; or
2519 (III) an interest charge;
2520 (B) a delivery charge;
2521 (C) an installation charge;

- 2522 (D) a manufacturer rebate on a motor vehicle; or
- 2523 (E) a tax or fee legally imposed directly on the consumer.
- 2524 ~~[(95)]~~ (96) "Purchaser" means a person to whom:
- 2525 (a) a sale of tangible personal property is made;
- 2526 (b) a product is transferred electronically; or
- 2527 (c) a service is furnished.
- 2528 ~~[(96)]~~ (97) "Regularly rented" means:
- 2529 (a) rented to a guest for value three or more times during a calendar year; or
- 2530 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 2531 value.
- 2532 ~~[(97)]~~ (98) "Rental" is as defined in Subsection ~~[(54)]~~ (55).
- 2533 ~~[(98)]~~ (99) (a) Except as provided in Subsection ~~[(98)]~~ (99)(b), "repairs or renovations
- 2534 of tangible personal property" means:
- 2535 (i) a repair or renovation of tangible personal property that is not permanently attached
- 2536 to real property; or
- 2537 (ii) attaching tangible personal property or a product transferred electronically to other
- 2538 tangible personal property or detaching tangible personal property or a product transferred
- 2539 electronically from other tangible personal property if:
- 2540 (A) the other tangible personal property to which the tangible personal property or
- 2541 product transferred electronically is attached or from which the tangible personal property or
- 2542 product transferred electronically is detached is not permanently attached to real property; and
- 2543 (B) the attachment of tangible personal property or a product transferred electronically
- 2544 to other tangible personal property or detachment of tangible personal property or a product
- 2545 transferred electronically from other tangible personal property is made in conjunction with a
- 2546 repair or replacement of tangible personal property or a product transferred electronically.
- 2547 (b) "Repairs or renovations of tangible personal property" does not include:
- 2548 (i) attaching prewritten computer software to other tangible personal property if the
- 2549 other tangible personal property to which the prewritten computer software is attached is not

2550 permanently attached to real property; or

2551 (ii) detaching prewritten computer software from other tangible personal property if the
2552 other tangible personal property from which the prewritten computer software is detached is
2553 not permanently attached to real property.

2554 [~~99~~] (100) "Research and development" means the process of inquiry or
2555 experimentation aimed at the discovery of facts, devices, technologies, or applications and the
2556 process of preparing those devices, technologies, or applications for marketing.

2557 [~~100~~] (101) (a) "Residential telecommunications services" means a
2558 telecommunications service or an ancillary service that is provided to an individual for personal
2559 use:

2560 (i) at a residential address; or

2561 (ii) at an institution, including a nursing home or a school, if the telecommunications
2562 service or ancillary service is provided to and paid for by the individual residing at the
2563 institution rather than the institution.

2564 (b) For purposes of Subsection [~~100~~] (101)(a)(i), a residential address includes an:

2565 (i) apartment; or

2566 (ii) other individual dwelling unit.

2567 [~~101~~] (102) "Residential use" means the use in or around a home, apartment building,
2568 sleeping quarters, and similar facilities or accommodations.

2569 [~~102~~] (103) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose
2570 other than:

2571 (a) resale;

2572 (b) sublease; or

2573 (c) subrent.

2574 [~~103~~] (104) (a) "Retailer" means any person engaged in a regularly organized
2575 business in tangible personal property or any other taxable transaction under Subsection
2576 59-12-103(1), and who is selling to the user or consumer and not for resale.

2577 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly

2578 engaged in the business of selling to users or consumers within the state.

2579 ~~[(104)]~~ (105) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
2580 otherwise, in any manner, of tangible personal property or any other taxable transaction under
2581 Subsection 59-12-103(1), for consideration.

2582 (b) "Sale" includes:

2583 (i) installment and credit sales;

2584 (ii) any closed transaction constituting a sale;

2585 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
2586 chapter;

2587 (iv) any transaction if the possession of property is transferred but the seller retains the
2588 title as security for the payment of the price; and

2589 (v) any transaction under which right to possession, operation, or use of any article of
2590 tangible personal property is granted under a lease or contract and the transfer of possession
2591 would be taxable if an outright sale were made.

2592 ~~[(105)]~~ (106) "Sale at retail" is as defined in Subsection ~~[(102)]~~ (103).

2593 ~~[(106)]~~ (107) "Sale-leaseback transaction" means a transaction by which title to
2594 tangible personal property or a product transferred electronically that is subject to a tax under
2595 this chapter is transferred:

2596 (a) by a purchaser-lessee;

2597 (b) to a lessor;

2598 (c) for consideration; and

2599 (d) if:

2600 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
2601 of the tangible personal property or product transferred electronically;

2602 (ii) the sale of the tangible personal property or product transferred electronically to the
2603 lessor is intended as a form of financing:

2604 (A) for the tangible personal property or product transferred electronically; and

2605 (B) to the purchaser-lessee; and

2606 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
2607 is required to:

2608 (A) capitalize the tangible personal property or product transferred electronically for
2609 financial reporting purposes; and

2610 (B) account for the lease payments as payments made under a financing arrangement.

2611 [~~(107)~~] (108) "Sales price" is as defined in Subsection [~~(94)~~] (95).

2612 [~~(108)~~] (109) (a) "Sales relating to schools" means the following sales by, amounts
2613 paid to, or amounts charged by a school:

2614 (i) sales that are directly related to the school's educational functions or activities
2615 including:

2616 (A) the sale of:

2617 (I) textbooks;

2618 (II) textbook fees;

2619 (III) laboratory fees;

2620 (IV) laboratory supplies; or

2621 (V) safety equipment;

2622 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

2623 that:

2624 (I) a student is specifically required to wear as a condition of participation in a
2625 school-related event or school-related activity; and

2626 (II) is not readily adaptable to general or continued usage to the extent that it takes the
2627 place of ordinary clothing;

2628 (C) sales of the following if the net or gross revenues generated by the sales are
2629 deposited into a school district fund or school fund dedicated to school meals:

2630 (I) food and food ingredients; or

2631 (II) prepared food; or

2632 (D) transportation charges for official school activities; or

2633 (ii) amounts paid to or amounts charged by a school for admission to a school-related

2634 event or school-related activity.

2635 (b) "Sales relating to schools" does not include:

2636 (i) bookstore sales of items that are not educational materials or supplies;

2637 (ii) except as provided in Subsection [~~(108)~~] (109)(a)(i)(B):

2638 (A) clothing;

2639 (B) clothing accessories or equipment;

2640 (C) protective equipment; or

2641 (D) sports or recreational equipment; or

2642 (iii) amounts paid to or amounts charged by a school for admission to a school-related

2643 event or school-related activity if the amounts paid or charged are passed through to a person:

2644 (A) other than a:

2645 (I) school;

2646 (II) nonprofit organization authorized by a school board or a governing body of a

2647 private school to organize and direct a competitive secondary school activity; or

2648 (III) nonprofit association authorized by a school board or a governing body of a

2649 private school to organize and direct a competitive secondary school activity; and

2650 (B) that is required to collect sales and use taxes under this chapter.

2651 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2652 commission may make rules defining the term "passed through."

2653 [~~(109)~~] (110) For purposes of this section and Section 59-12-104, "school":

2654 (a) means:

2655 (i) an elementary school or a secondary school that:

2656 (A) is a:

2657 (I) public school; or

2658 (II) private school; and

2659 (B) provides instruction for one or more grades kindergarten through 12; or

2660 (ii) a public school district; and

2661 (b) includes the Electronic High School as defined in Section 53A-15-1002.

- 2662 [~~(H0)~~] (111) "Seller" means a person that makes a sale, lease, or rental of:
- 2663 (a) tangible personal property;
- 2664 (b) a product transferred electronically; or
- 2665 (c) a service.
- 2666 [~~(H1)~~] (112) (a) "Semiconductor fabricating, processing, research, or development
- 2667 materials" means tangible personal property or a product transferred electronically if the
- 2668 tangible personal property or product transferred electronically is:
- 2669 (i) used primarily in the process of:
- 2670 (A) (I) manufacturing a semiconductor;
- 2671 (II) fabricating a semiconductor; or
- 2672 (III) research or development of a:
- 2673 (Aa) semiconductor; or
- 2674 (Bb) semiconductor manufacturing process; or
- 2675 (B) maintaining an environment suitable for a semiconductor; or
- 2676 (ii) consumed primarily in the process of:
- 2677 (A) (I) manufacturing a semiconductor;
- 2678 (II) fabricating a semiconductor; or
- 2679 (III) research or development of a:
- 2680 (Aa) semiconductor; or
- 2681 (Bb) semiconductor manufacturing process; or
- 2682 (B) maintaining an environment suitable for a semiconductor.
- 2683 (b) "Semiconductor fabricating, processing, research, or development materials"
- 2684 includes:
- 2685 (i) parts used in the repairs or renovations of tangible personal property or a product
- 2686 transferred electronically described in Subsection [~~(H1)~~] (112)(a); or
- 2687 (ii) a chemical, catalyst, or other material used to:
- 2688 (A) produce or induce in a semiconductor a:
- 2689 (I) chemical change; or

2690 (II) physical change;

2691 (B) remove impurities from a semiconductor; or

2692 (C) improve the marketable condition of a semiconductor.

2693 [~~(112)~~] (113) "Senior citizen center" means a facility having the primary purpose of

2694 providing services to the aged as defined in Section 62A-3-101.

2695 [~~(113)~~] (114) "Simplified electronic return" means the electronic return:

2696 (a) described in Section 318(C) of the agreement; and

2697 (b) approved by the governing board of the agreement.

2698 [~~(114)~~] (115) "Solar energy" means the sun used as the sole source of energy for

2699 producing electricity.

2700 [~~(115)~~] (116) (a) "Sports or recreational equipment" means an item:

2701 (i) designed for human use; and

2702 (ii) that is:

2703 (A) worn in conjunction with:

2704 (I) an athletic activity; or

2705 (II) a recreational activity; and

2706 (B) not suitable for general use.

2707 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2708 commission shall make rules:

2709 (i) listing the items that constitute "sports or recreational equipment"; and

2710 (ii) that are consistent with the list of items that constitute "sports or recreational

2711 equipment" under the agreement.

2712 [~~(116)~~] (117) "State" means the state of Utah, its departments, and agencies.

2713 [~~(117)~~] (118) "Storage" means any keeping or retention of tangible personal property or

2714 any other taxable transaction under Subsection 59-12-103(1), in this state for any purpose

2715 except sale in the regular course of business.

2716 [~~(118)~~] (119) (a) Except as provided in Subsection [~~(118)~~] (119)(d) or (e), "tangible

2717 personal property" means personal property that:

- 2718 (i) may be:
- 2719 (A) seen;
- 2720 (B) weighed;
- 2721 (C) measured;
- 2722 (D) felt; or
- 2723 (E) touched; or
- 2724 (ii) is in any manner perceptible to the senses.
- 2725 (b) "Tangible personal property" includes:
- 2726 (i) electricity;
- 2727 (ii) water;
- 2728 (iii) gas;
- 2729 (iv) steam; or
- 2730 (v) prewritten computer software, regardless of the manner in which the prewritten
- 2731 computer software is transferred.
- 2732 (c) "Tangible personal property" includes the following regardless of whether the item
- 2733 is attached to real property:
- 2734 (i) a dishwasher;
- 2735 (ii) a dryer;
- 2736 (iii) a freezer;
- 2737 (iv) a microwave;
- 2738 (v) a refrigerator;
- 2739 (vi) a stove;
- 2740 (vii) a washer; or
- 2741 (viii) an item similar to Subsections [~~(118)~~] (119)(c)(i) through (vii) as determined by
- 2742 the commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 2743 Rulemaking Act.
- 2744 (d) "Tangible personal property" does not include a product that is transferred
- 2745 electronically.

2746 (e) "Tangible personal property" does not include the following if attached to real
2747 property, regardless of whether the attachment to real property is only through a line that
2748 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
2749 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2750 Rulemaking Act:

- 2751 (i) a hot water heater;
- 2752 (ii) a water filtration system; or
- 2753 (iii) a water softener system.

2754 [~~(119)~~] (120) (a) "Telecommunications enabling or facilitating equipment, machinery,
2755 or software" means an item listed in Subsection [~~(119)~~] (120)(b) if that item is purchased or
2756 leased primarily to enable or facilitate one or more of the following to function:

- 2757 (i) telecommunications switching or routing equipment, machinery, or software; or
- 2758 (ii) telecommunications transmission equipment, machinery, or software.

2759 (b) The following apply to Subsection [~~(119)~~] (120)(a):

- 2760 (i) a pole;
- 2761 (ii) software;
- 2762 (iii) a supplementary power supply;
- 2763 (iv) temperature or environmental equipment or machinery;
- 2764 (v) test equipment;
- 2765 (vi) a tower; or
- 2766 (vii) equipment, machinery, or software that functions similarly to an item listed in

2767 Subsections [~~(119)~~] (120)(b)(i) through (vi) as determined by the commission by rule made in
2768 accordance with Subsection [~~(119)~~] (120)(c).

2769 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2770 commission may by rule define what constitutes equipment, machinery, or software that
2771 functions similarly to an item listed in Subsections [~~(119)~~] (120)(b)(i) through (vi).

2772 [~~(120)~~] (121) "Telecommunications equipment, machinery, or software required for
2773 911 service" means equipment, machinery, or software that is required to comply with 47

2774 C.F.R. Sec. 20.18.

2775 [~~(121)~~] (122) "Telecommunications maintenance or repair equipment, machinery, or
2776 software" means equipment, machinery, or software purchased or leased primarily to maintain
2777 or repair one or more of the following, regardless of whether the equipment, machinery, or
2778 software is purchased or leased as a spare part or as an upgrade or modification to one or more
2779 of the following:

2780 (a) telecommunications enabling or facilitating equipment, machinery, or software;

2781 (b) telecommunications switching or routing equipment, machinery, or software; or

2782 (c) telecommunications transmission equipment, machinery, or software.

2783 [~~(122)~~] (123) (a) "Telecommunications service" means the electronic conveyance,
2784 routing, or transmission of audio, data, video, voice, or any other information or signal to a
2785 point, or among or between points.

2786 (b) "Telecommunications service" includes:

2787 (i) an electronic conveyance, routing, or transmission with respect to which a computer
2788 processing application is used to act:

2789 (A) on the code, form, or protocol of the content;

2790 (B) for the purpose of electronic conveyance, routing, or transmission; and

2791 (C) regardless of whether the service:

2792 (I) is referred to as voice over Internet protocol service; or

2793 (II) is classified by the Federal Communications Commission as enhanced or value
2794 added;

2795 (ii) an 800 service;

2796 (iii) a 900 service;

2797 (iv) a fixed wireless service;

2798 (v) a mobile wireless service;

2799 (vi) a postpaid calling service;

2800 (vii) a prepaid calling service;

2801 (viii) a prepaid wireless calling service; or

- 2802 (ix) a private communications service.
- 2803 (c) "Telecommunications service" does not include:
- 2804 (i) advertising, including directory advertising;
- 2805 (ii) an ancillary service;
- 2806 (iii) a billing and collection service provided to a third party;
- 2807 (iv) a data processing and information service if:
- 2808 (A) the data processing and information service allows data to be:
- 2809 (I) (Aa) acquired;
- 2810 (Bb) generated;
- 2811 (Cc) processed;
- 2812 (Dd) retrieved; or
- 2813 (Ee) stored; and
- 2814 (II) delivered by an electronic transmission to a purchaser; and
- 2815 (B) the purchaser's primary purpose for the underlying transaction is the processed data
- 2816 or information;
- 2817 (v) installation or maintenance of the following on a customer's premises:
- 2818 (A) equipment; or
- 2819 (B) wiring;
- 2820 (vi) Internet access service;
- 2821 (vii) a paging service;
- 2822 (viii) a product transferred electronically, including:
- 2823 (A) music;
- 2824 (B) reading material;
- 2825 (C) a ring tone;
- 2826 (D) software; or
- 2827 (E) video;
- 2828 (ix) a radio and television audio and video programming service:
- 2829 (A) regardless of the medium; and

- 2830 (B) including:
- 2831 (I) furnishing conveyance, routing, or transmission of a television audio and video
2832 programming service by a programming service provider;
- 2833 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 2834 (III) audio and video programming services delivered by a commercial mobile radio
2835 service provider as defined in 47 C.F.R. Sec. 20.3;
- 2836 (x) a value-added nonvoice data service; or
- 2837 (xi) tangible personal property.
- 2838 [~~(123)~~] (124) (a) "Telecommunications service provider" means a person that:
- 2839 (i) owns, controls, operates, or manages a telecommunications service; and
- 2840 (ii) engages in an activity described in Subsection [~~(123)~~] (124)(a)(i) for the shared use
2841 with or resale to any person of the telecommunications service.
- 2842 (b) A person described in Subsection [~~(123)~~] (124)(a) is a telecommunications service
2843 provider whether or not the Public Service Commission of Utah regulates:
- 2844 (i) that person; or
- 2845 (ii) the telecommunications service that the person owns, controls, operates, or
2846 manages.
- 2847 [~~(124)~~] (125) (a) "Telecommunications switching or routing equipment, machinery, or
2848 software" means an item listed in Subsection [~~(124)~~] (125)(b) if that item is purchased or
2849 leased primarily for switching or routing:
- 2850 (i) an ancillary service;
- 2851 (ii) data communications;
- 2852 (iii) voice communications; or
- 2853 (iv) telecommunications service.
- 2854 (b) The following apply to Subsection [~~(124)~~] (125)(a):
- 2855 (i) a bridge;
- 2856 (ii) a computer;
- 2857 (iii) a cross connect;

- 2858 (iv) a modem;
- 2859 (v) a multiplexer;
- 2860 (vi) plug in circuitry;
- 2861 (vii) a router;
- 2862 (viii) software;
- 2863 (ix) a switch; or
- 2864 (x) equipment, machinery, or software that functions similarly to an item listed in

2865 Subsections [~~(124)~~] (125)(b)(i) through (ix) as determined by the commission by rule made in
2866 accordance with Subsection [~~(124)~~] (125)(c).

2867 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2868 commission may by rule define what constitutes equipment, machinery, or software that
2869 functions similarly to an item listed in Subsections [~~(124)~~] (125)(b)(i) through (ix).

2870 [~~(125)~~] (126) (a) "Telecommunications transmission equipment, machinery, or
2871 software" means an item listed in Subsection [~~(125)~~] (126)(b) if that item is purchased or
2872 leased primarily for sending, receiving, or transporting:

- 2873 (i) an ancillary service;
- 2874 (ii) data communications;
- 2875 (iii) voice communications; or
- 2876 (iv) telecommunications service.

2877 (b) The following apply to Subsection [~~(125)~~] (126)(a):

- 2878 (i) an amplifier;
- 2879 (ii) a cable;
- 2880 (iii) a closure;
- 2881 (iv) a conduit;
- 2882 (v) a controller;
- 2883 (vi) a duplexer;
- 2884 (vii) a filter;
- 2885 (viii) an input device;

- 2886 (ix) an input/output device;
- 2887 (x) an insulator;
- 2888 (xi) microwave machinery or equipment;
- 2889 (xii) an oscillator;
- 2890 (xiii) an output device;
- 2891 (xiv) a pedestal;
- 2892 (xv) a power converter;
- 2893 (xvi) a power supply;
- 2894 (xvii) a radio channel;
- 2895 (xviii) a radio receiver;
- 2896 (xix) a radio transmitter;
- 2897 (xx) a repeater;
- 2898 (xxi) software;
- 2899 (xxii) a terminal;
- 2900 (xxiii) a timing unit;
- 2901 (xxiv) a transformer;
- 2902 (xxv) a wire; or
- 2903 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 2904 Subsections [~~(125)~~] (126)(b)(i) through (xxv) as determined by the commission by rule made in
- 2905 accordance with Subsection [~~(125)~~] (126)(c).
- 2906 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2907 commission may by rule define what constitutes equipment, machinery, or software that
- 2908 functions similarly to an item listed in Subsections [~~(125)~~] (126)(b)(i) through (xxv).
- 2909 [~~(126)~~] (127) (a) "Textbook for a higher education course" means a textbook or other
- 2910 printed material that is required for a course:
- 2911 (i) offered by an institution of higher education; and
- 2912 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 2913 (b) "Textbook for a higher education course" includes a textbook in electronic format.

2914 [~~(127)~~] (128) "Tobacco" means:

2915 (a) a cigarette;

2916 (b) a cigar;

2917 (c) chewing tobacco;

2918 (d) pipe tobacco; or

2919 (e) any other item that contains tobacco.

2920 [~~(128)~~] (129) "Unassisted amusement device" means an amusement device, skill

2921 device, or ride device that is started and stopped by the purchaser or renter of the right to use or

2922 operate the amusement device, skill device, or ride device.

2923 [~~(129)~~] (130) (a) "Use" means the exercise of any right or power over tangible personal

2924 property, a product transferred electronically, or a service under Subsection 59-12-103(1),

2925 incident to the ownership or the leasing of that tangible personal property, product transferred

2926 electronically, or service.

2927 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal

2928 property, a product transferred electronically, or a service in the regular course of business and

2929 held for resale.

2930 [~~(130)~~] (131) "Value-added nonvoice data service" means a service:

2931 (a) that otherwise meets the definition of a telecommunications service except that a

2932 computer processing application is used to act primarily for a purpose other than conveyance,

2933 routing, or transmission; and

2934 (b) with respect to which a computer processing application is used to act on data or

2935 information:

2936 (i) code;

2937 (ii) content;

2938 (iii) form; or

2939 (iv) protocol.

2940 [~~(131)~~] (132) (a) Subject to Subsection [~~(131)~~] (132)(b), "vehicle" means the following

2941 that are required to be titled, registered, or titled and registered:

- 2942 (i) an aircraft as defined in Section 72-10-102;
- 2943 (ii) a vehicle as defined in Section 41-1a-102;
- 2944 (iii) an off-highway vehicle as defined in Section 41-22-2; or
- 2945 (iv) a vessel as defined in Section 41-1a-102.
- 2946 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 2947 (i) a vehicle described in Subsection [~~(131)~~] (132)(a); or
- 2948 (ii) (A) a locomotive;
- 2949 (B) a freight car;
- 2950 (C) railroad work equipment; or
- 2951 (D) other railroad rolling stock.
- 2952 [~~(132)~~] (133) "Vehicle dealer" means a person engaged in the business of buying,
- 2953 selling, or exchanging a vehicle as defined in Subsection [~~(131)~~] (132).
- 2954 [~~(133)~~] (134) (a) "Vertical service" means an ancillary service that:
- 2955 (i) is offered in connection with one or more telecommunications services; and
- 2956 (ii) offers an advanced calling feature that allows a customer to:
- 2957 (A) identify a caller; and
- 2958 (B) manage multiple calls and call connections.
- 2959 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 2960 conference bridging service.
- 2961 [~~(134)~~] (135) (a) "Voice mail service" means an ancillary service that enables a
- 2962 customer to receive, send, or store a recorded message.
- 2963 (b) "Voice mail service" does not include a vertical service that a customer is required
- 2964 to have in order to utilize a voice mail service.
- 2965 [~~(135)~~] (136) (a) Except as provided in Subsection [~~(135)~~] (136)(b), "waste energy
- 2966 facility" means a facility that generates electricity:
- 2967 (i) using as the primary source of energy waste materials that would be placed in a
- 2968 landfill or refuse pit if it were not used to generate electricity, including:
- 2969 (A) tires;

2970 (B) waste coal;
2971 (C) oil shale; or
2972 (D) municipal solid waste; and
2973 (ii) in amounts greater than actually required for the operation of the facility.
2974 (b) "Waste energy facility" does not include a facility that incinerates:
2975 (i) hospital waste as defined in 40 C.F.R. 60.51c; or
2976 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
2977 [~~136~~] (137) "Watercraft" means a vessel as defined in Section 73-18-2.
2978 [~~137~~] (138) "Wind energy" means wind used as the sole source of energy to produce
2979 electricity.
2980 [~~138~~] (139) "ZIP Code" means a Zoning Improvement Plan Code assigned to a
2981 geographic location by the United States Postal Service.
2982 Section 3. Section **59-12-104** is amended to read:
2983 **59-12-104. Exemptions.**
2984 The following sales and uses are exempt from the taxes imposed by this chapter:
2985 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
2986 under Chapter 13, Motor and Special Fuel Tax Act;
2987 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political
2988 subdivisions; however, this exemption does not apply to sales of:
2989 (a) construction materials except:
2990 (i) construction materials purchased by or on behalf of institutions of the public
2991 education system as defined in Utah Constitution Article X, Section 2, provided the
2992 construction materials are clearly identified and segregated and installed or converted to real
2993 property which is owned by institutions of the public education system; and
2994 (ii) construction materials purchased by the state, its institutions, or its political
2995 subdivisions which are installed or converted to real property by employees of the state, its
2996 institutions, or its political subdivisions; or
2997 (b) tangible personal property in connection with the construction, operation,

2998 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
2999 providing additional project capacity, as defined in Section 11-13-103;

3000 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

3001 (i) the proceeds of each sale do not exceed \$1; and

3002 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
3003 the cost of the item described in Subsection (3)(b) as goods consumed; and

3004 (b) Subsection (3)(a) applies to:

3005 (i) food and food ingredients; or

3006 (ii) prepared food;

3007 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

3008 (i) alcoholic beverages;

3009 (ii) food and food ingredients; or

3010 (iii) prepared food;

3011 (b) sales of tangible personal property or a product transferred electronically:

3012 (i) to a passenger;

3013 (ii) by a commercial airline carrier; and

3014 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

3015 (c) services related to Subsection (4)(a) or (b);

3016 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts
3017 and equipment:

3018 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002
3019 North American Industry Classification System of the federal Executive Office of the
3020 President, Office of Management and Budget; and

3021 (II) for:

3022 (Aa) installation in an aircraft, including services relating to the installation of parts or
3023 equipment in the aircraft;

3024 (Bb) renovation of an aircraft; or

3025 (Cc) repair of an aircraft; or

3026 (B) for installation in an aircraft operated by a common carrier in interstate or foreign
3027 commerce; or

3028 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an
3029 aircraft operated by a common carrier in interstate or foreign commerce; and

3030 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
3031 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a
3032 refund:

3033 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

3034 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

3035 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for
3036 the sale prior to filing for the refund;

3037 (iv) for sales and use taxes paid under this chapter on the sale;

3038 (v) in accordance with Section 59-1-1410; and

3039 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
3040 the person files for the refund on or before September 30, 2011;

3041 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
3042 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
3043 exhibitor, distributor, or commercial television or radio broadcaster;

3044 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
3045 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
3046 washing of tangible personal property;

3047 (b) if a seller that sells at the same business location assisted cleaning or washing of
3048 tangible personal property and cleaning or washing of tangible personal property that is not
3049 assisted cleaning or washing of tangible personal property, the exemption described in
3050 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning
3051 or washing of the tangible personal property; and

3052 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,
3053 Utah Administrative Rulemaking Act, the commission may make rules:

- 3054 (i) governing the circumstances under which sales are at the same business location;
3055 and
3056 (ii) establishing the procedures and requirements for a seller to separately account for
3057 sales of assisted cleaning or washing of tangible personal property;
- 3058 (8) sales made to or by religious or charitable institutions in the conduct of their regular
3059 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
3060 fulfilled;
- 3061 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
3062 this state if the vehicle is:
- 3063 (a) not registered in this state; and
3064 (b) (i) not used in this state; or
3065 (ii) used in this state:
- 3066 (A) if the vehicle is not used to conduct business, for a time period that does not
3067 exceed the longer of:
3068 (I) 30 days in any calendar year; or
3069 (II) the time period necessary to transport the vehicle to the borders of this state; or
3070 (B) if the vehicle is used to conduct business, for the time period necessary to transport
3071 the vehicle to the borders of this state;
- 3072 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
3073 (i) the item is intended for human use; and
3074 (ii) (A) a prescription was issued for the item; or
3075 (B) the item was purchased by a hospital or other medical facility; and
3076 (b) (i) Subsection (10)(a) applies to:
3077 (A) a drug;
3078 (B) a syringe; or
3079 (C) a stoma supply; and
3080 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3081 commission may by rule define the terms:

- 3082 (A) "syringe"; or
- 3083 (B) "stoma supply";
- 3084 (11) sales or use of property, materials, or services used in the construction of or
- 3085 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 3086 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 3087 (i) the following if the item described in Subsection (12)(c) is not available to the
- 3088 general public:
 - 3089 (A) a church; or
 - 3090 (B) a charitable institution;
- 3091 (ii) an institution of higher education if:
 - 3092 (A) the item described in Subsection (12)(c) is not available to the general public; or
 - 3093 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
 - 3094 offered by the institution of higher education; or
- 3095 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
 - 3096 (i) a medical facility; or
 - 3097 (ii) a nursing facility; and
 - 3098 (c) Subsections (12)(a) and (b) apply to:
 - 3099 (i) food and food ingredients;
 - 3100 (ii) prepared food; or
 - 3101 (iii) alcoholic beverages;
- 3102 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 3103 or a product transferred electronically by a person:
 - 3104 (i) regardless of the number of transactions involving the sale of that tangible personal
 - 3105 property or product transferred electronically by that person; and
 - 3106 (ii) not regularly engaged in the business of selling that type of tangible personal
 - 3107 property or product transferred electronically;
- 3108 (b) this Subsection (13) does not apply if:
 - 3109 (i) the sale is one of a series of sales of a character to indicate that the person is

3110 regularly engaged in the business of selling that type of tangible personal property or product
3111 transferred electronically;

3112 (ii) the person holds that person out as regularly engaged in the business of selling that
3113 type of tangible personal property or product transferred electronically;

3114 (iii) the person sells an item of tangible personal property or product transferred
3115 electronically that the person purchased as a sale that is exempt under Subsection (25); or

3116 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
3117 this state in which case the tax is based upon:

3118 (A) the bill of sale or other written evidence of value of the vehicle or vessel being
3119 sold; or

3120 (B) in the absence of a bill of sale or other written evidence of value, the fair market
3121 value of the vehicle or vessel being sold at the time of the sale as determined by the
3122 commission; and

3123 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3124 commission shall make rules establishing the circumstances under which:

3125 (i) a person is regularly engaged in the business of selling a type of tangible personal
3126 property or product transferred electronically;

3127 (ii) a sale of tangible personal property or a product transferred electronically is one of
3128 a series of sales of a character to indicate that a person is regularly engaged in the business of
3129 selling that type of tangible personal property or product transferred electronically; or

3130 (iii) a person holds that person out as regularly engaged in the business of selling a type
3131 of tangible personal property or product transferred electronically;

3132 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
3133 July 1, 2006, for a purchase or lease by a manufacturing facility except for a cogeneration
3134 facility, of the following:

3135 (i) machinery and equipment that:

3136 (A) are used:

3137 (I) for a manufacturing facility except for a manufacturing facility that is a scrap

3138 recycler described in Subsection 59-12-102(60)(b):

3139 (Aa) in the manufacturing process;

3140 (Bb) to manufacture an item sold as tangible personal property; and

3141 (Cc) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

3142 (14)(a)(i)(A)(I) in the state; or

3143 (II) for a manufacturing facility that is a scrap recycler described in Subsection

3144 59-12-102(60)(b):

3145 (Aa) to process an item sold as tangible personal property; and

3146 (Bb) beginning on July 1, 2009, in a manufacturing facility described in this Subsection

3147 (14)(a)(i)(A)(II) in the state; and

3148 (B) have an economic life of three or more years; and

3149 (ii) normal operating repair or replacement parts that:

3150 (A) have an economic life of three or more years; and

3151 (B) are used:

3152 (I) for a manufacturing facility except for a manufacturing facility that is a scrap

3153 recycler described in Subsection 59-12-102(60)(b):

3154 (Aa) in the manufacturing process; and

3155 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(I) in the

3156 state; or

3157 (II) for a manufacturing facility that is a scrap recycler described in Subsection

3158 59-12-102(60)(b):

3159 (Aa) to process an item sold as tangible personal property; and

3160 (Bb) in a manufacturing facility described in this Subsection (14)(a)(ii)(B)(II) in the

3161 state;

3162 (b) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

3163 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,

3164 of the following:

3165 (i) machinery and equipment that:

- 3166 (A) are used:
- 3167 (I) in the manufacturing process;
- 3168 (II) to manufacture an item sold as tangible personal property; and
- 3169 (III) beginning on July 1, 2009, in a manufacturing facility described in this Subsection
- 3170 (14)(b) in the state; and
- 3171 (B) have an economic life of three or more years; and
- 3172 (ii) normal operating repair or replacement parts that:
- 3173 (A) are used:
- 3174 (I) in the manufacturing process; and
- 3175 (II) in a manufacturing facility described in this Subsection (14)(b) in the state; and
- 3176 (B) have an economic life of three or more years;
- 3177 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,
- 3178 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or
- 3179 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for
- 3180 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,
- 3181 of the 2002 North American Industry Classification System of the federal Executive Office of
- 3182 the President, Office of Management and Budget, of the following:
- 3183 (i) machinery and equipment that:
- 3184 (A) are used:
- 3185 (I) (Aa) in the production process, other than the production of real property; or
- 3186 (Bb) in research and development; and
- 3187 (II) beginning on July 1, 2009, in an establishment described in this Subsection (14)(c)
- 3188 in the state; and
- 3189 (B) have an economic life of three or more years; and
- 3190 (ii) normal operating repair or replacement parts that:
- 3191 (A) have an economic life of three or more years; and
- 3192 (B) are used in:
- 3193 (I) (Aa) the production process, except for the production of real property; and

3194 (Bb) an establishment described in this Subsection (14)(c) in the state; or
3195 (II) (Aa) research and development; and
3196 (Bb) in an establishment described in this Subsection (14)(c) in the state;
3197 (d) (i) amounts paid or charged for a purchase or lease made on or after July 1, 2010,
3198 but on or before June 30, 2014, by an establishment described in NAICS Code 518112, Web
3199 Search Portals, of the 2002 North American Industry Classification System of the federal
3200 Executive Office of the President, Office of Management and Budget, of the following:
3201 (A) machinery and equipment that:
3202 (I) are used in the operation of the web search portal;
3203 (II) have an economic life of three or more years; and
3204 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
3205 in the state; and
3206 (B) normal operating repair or replacement parts that:
3207 (I) are used in the operation of the web search portal;
3208 (II) have an economic life of three or more years; and
3209 (III) are used in a new or expanding establishment described in this Subsection (14)(d)
3210 in the state; or
3211 (ii) amounts paid or charged for a purchase or lease made on or after July 1, 2014, by
3212 an establishment described in NAICS Code 518112, Web Search Portals, of the 2002 North
3213 American Industry Classification System of the federal Executive Office of the President,
3214 Office of Management and Budget, of the following:
3215 (A) machinery and equipment that:
3216 (I) are used in the operation of the web search portal; and
3217 (II) have an economic life of three or more years; and
3218 (B) normal operating repair or replacement parts that:
3219 (I) are used in the operation of the web search portal; and
3220 (II) have an economic life of three or more years;
3221 (e) for purposes of this Subsection (14) and in accordance with Title 63G, Chapter 3,

3222 Utah Administrative Rulemaking Act, the commission:

3223 (i) shall by rule define the term "establishment"; and

3224 (ii) may by rule define what constitutes:

3225 (A) processing an item sold as tangible personal property;

3226 (B) the production process, except for the production of real property;

3227 (C) research and development; or

3228 (D) a new or expanding establishment described in Subsection (14)(d) in the state; and

3229 (f) on or before October 1, 2011, and every five years after October 1, 2011, the

3230 commission shall:

3231 (i) review the exemptions described in this Subsection (14) and make

3232 recommendations to the Revenue and Taxation Interim Committee concerning whether the

3233 exemptions should be continued, modified, or repealed; and

3234 (ii) include in its report:

3235 (A) an estimate of the cost of the exemptions;

3236 (B) the purpose and effectiveness of the exemptions; and

3237 (C) the benefits of the exemptions to the state;

3238 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

3239 (i) tooling;

3240 (ii) special tooling;

3241 (iii) support equipment;

3242 (iv) special test equipment; or

3243 (v) parts used in the repairs or renovations of tooling or equipment described in

3244 Subsections (15)(a)(i) through (iv); and

3245 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

3246 (i) the tooling, equipment, or parts are used or consumed exclusively in the

3247 performance of any aerospace or electronics industry contract with the United States

3248 government or any subcontract under that contract; and

3249 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

3250 title to the tooling, equipment, or parts is vested in the United States government as evidenced
3251 by:

3252 (A) a government identification tag placed on the tooling, equipment, or parts; or

3253 (B) listing on a government-approved property record if placing a government
3254 identification tag on the tooling, equipment, or parts is impractical;

3255 (16) sales of newspapers or newspaper subscriptions;

3256 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a
3257 product transferred electronically traded in as full or part payment of the purchase price, except
3258 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,
3259 trade-ins are limited to other vehicles only, and the tax is based upon:

3260 (i) the bill of sale or other written evidence of value of the vehicle being sold and the
3261 vehicle being traded in; or

3262 (ii) in the absence of a bill of sale or other written evidence of value, the then existing
3263 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the
3264 commission; and

3265 (b) [~~notwithstanding Subsection (17)(a);~~] Subsection (17)(a) does not apply to the
3266 following items of tangible personal property or products transferred electronically traded in as
3267 full or part payment of the purchase price:

3268 (i) money;

3269 (ii) electricity;

3270 (iii) water;

3271 (iv) gas; or

3272 (v) steam;

3273 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
3274 or a product transferred electronically used or consumed primarily and directly in farming
3275 operations, regardless of whether the tangible personal property or product transferred
3276 electronically:

3277 (A) becomes part of real estate; or

3278 (B) is installed by a:
3279 (I) farmer;
3280 (II) contractor; or
3281 (III) subcontractor; or
3282 (ii) sales of parts used in the repairs or renovations of tangible personal property or a
3283 product transferred electronically if the tangible personal property or product transferred
3284 electronically is exempt under Subsection (18)(a)(i); and
3285 (b) [~~notwithstanding Subsection (18)(a),~~] amounts paid or charged for the following
3286 are subject to the taxes imposed by this chapter:
3287 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is
3288 incidental to farming:
3289 (I) machinery;
3290 (II) equipment;
3291 (III) materials; or
3292 (IV) supplies; and
3293 (B) tangible personal property that is considered to be used in a manner that is
3294 incidental to farming includes:
3295 (I) hand tools; or
3296 (II) maintenance and janitorial equipment and supplies;
3297 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product
3298 transferred electronically if the tangible personal property or product transferred electronically
3299 is used in an activity other than farming; and
3300 (B) tangible personal property or a product transferred electronically that is considered
3301 to be used in an activity other than farming includes:
3302 (I) office equipment and supplies; or
3303 (II) equipment and supplies used in:
3304 (Aa) the sale or distribution of farm products;
3305 (Bb) research; or

3306 (Cc) transportation; or
3307 (iii) a vehicle required to be registered by the laws of this state during the period
3308 ending two years after the date of the vehicle's purchase;
3309 (19) sales of hay;
3310 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
3311 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
3312 garden, farm, or other agricultural produce is sold by:
3313 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
3314 agricultural produce;
3315 (b) an employee of the producer described in Subsection (20)(a); or
3316 (c) a member of the immediate family of the producer described in Subsection (20)(a);
3317 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
3318 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
3319 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
3320 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
3321 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
3322 manufacturer, processor, wholesaler, or retailer;
3323 (23) a product stored in the state for resale;
3324 (24) (a) purchases of a product if:
3325 (i) the product is:
3326 (A) purchased outside of this state;
3327 (B) brought into this state:
3328 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
3329 (II) by a nonresident person who is not living or working in this state at the time of the
3330 purchase;
3331 (C) used for the personal use or enjoyment of the nonresident person described in
3332 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
3333 (D) not used in conducting business in this state; and

- 3334 (ii) for:
- 3335 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of
- 3336 the product for a purpose for which the product is designed occurs outside of this state;
- 3337 (B) a boat, the boat is registered outside of this state; or
- 3338 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 3339 outside of this state;
- 3340 (b) the exemption provided for in Subsection (24)(a) does not apply to:
- 3341 (i) a lease or rental of a product; or
- 3342 (ii) a sale of a vehicle exempt under Subsection (33); and
- 3343 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
- 3344 purposes of Subsection (24)(a), the commission may by rule define what constitutes the
- 3345 following:
- 3346 (i) conducting business in this state if that phrase has the same meaning in this
- 3347 Subsection (24) as in Subsection (63);
- 3348 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)
- 3349 as in Subsection (63); or
- 3350 (iii) a purpose for which a product is designed if that phrase has the same meaning in
- 3351 this Subsection (24) as in Subsection (63);
- 3352 (25) a product purchased for resale in this state, in the regular course of business, either
- 3353 in its original form or as an ingredient or component part of a manufactured or compounded
- 3354 product;
- 3355 (26) a product upon which a sales or use tax was paid to some other state, or one of its
- 3356 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
- 3357 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
- 3358 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
- 3359 Act;
- 3360 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
- 3361 person for use in compounding a service taxable under the subsections;

3362 (28) purchases made in accordance with the special supplemental nutrition program for
3363 women, infants, and children established in 42 U.S.C. Sec. 1786;

3364 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
3365 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
3366 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification
3367 Manual of the federal Executive Office of the President, Office of Management and Budget;

3368 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
3369 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

3370 (a) not registered in this state; and

3371 (b) (i) not used in this state; or

3372 (ii) used in this state:

3373 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
3374 time period that does not exceed the longer of:

3375 (I) 30 days in any calendar year; or

3376 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
3377 the borders of this state; or

3378 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
3379 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
3380 state;

3381 (31) sales of aircraft manufactured in Utah;

3382 (32) amounts paid for the purchase of telecommunications service for purposes of
3383 providing telecommunications service;

3384 (33) sales, leases, or uses of the following:

3385 (a) a vehicle by an authorized carrier; or

3386 (b) tangible personal property that is installed on a vehicle:

3387 (i) sold or leased to or used by an authorized carrier; and

3388 (ii) before the vehicle is placed in service for the first time;

3389 (34) (a) 45% of the sales price of any new manufactured home; and

3390 (b) 100% of the sales price of any used manufactured home;
3391 (35) sales relating to schools and fundraising sales;
3392 (36) sales or rentals of durable medical equipment if:
3393 (a) a person presents a prescription for the durable medical equipment; and
3394 (b) the durable medical equipment is used for home use only;
3395 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
3396 Section 72-11-102; and
3397 (b) the commission shall by rule determine the method for calculating sales exempt
3398 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
3399 (38) sales to a ski resort of:
3400 (a) snowmaking equipment;
3401 (b) ski slope grooming equipment;
3402 (c) passenger ropeways as defined in Section 72-11-102; or
3403 (d) parts used in the repairs or renovations of equipment or passenger ropeways
3404 described in Subsections (38)(a) through (c);
3405 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
3406 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
3407 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
3408 59-12-102;
3409 (b) if a seller that sells or rents at the same business location the right to use or operate
3410 for amusement, entertainment, or recreation one or more unassisted amusement devices and
3411 one or more assisted amusement devices, the exemption described in Subsection (40)(a)
3412 applies if the seller separately accounts for the sales or rentals of the right to use or operate for
3413 amusement, entertainment, or recreation for the assisted amusement devices; and
3414 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,
3415 Utah Administrative Rulemaking Act, the commission may make rules:
3416 (i) governing the circumstances under which sales are at the same business location;
3417 and

3418 (ii) establishing the procedures and requirements for a seller to separately account for
3419 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
3420 assisted amusement devices;

3421 (41) (a) sales of photocopies by:

3422 (i) a governmental entity; or

3423 (ii) an entity within the state system of public education, including:

3424 (A) a school; or

3425 (B) the State Board of Education; or

3426 (b) sales of publications by a governmental entity;

3427 (42) amounts paid for admission to an athletic event at an institution of higher
3428 education that is subject to the provisions of Title IX of the Education Amendments of 1972,
3429 20 U.S.C. Sec. 1681 et seq.;

3430 (43) (a) sales made to or by:

3431 (i) an area agency on aging; or

3432 (ii) a senior citizen center owned by a county, city, or town; or

3433 (b) sales made by a senior citizen center that contracts with an area agency on aging;

3434 (44) sales or leases of semiconductor fabricating, processing, research, or development
3435 materials regardless of whether the semiconductor fabricating, processing, research, or
3436 development materials:

3437 (a) actually come into contact with a semiconductor; or

3438 (b) ultimately become incorporated into real property;

3439 (45) an amount paid by or charged to a purchaser for accommodations and services
3440 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
3441 59-12-104.2;

3442 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
3443 sports event registration certificate in accordance with Section 41-3-306 for the event period
3444 specified on the temporary sports event registration certificate;

3445 (47) (a) sales or uses of electricity, if the sales or uses are made under a tariff adopted

3446 by the Public Service Commission of Utah only for purchase of electricity produced from a
3447 new alternative energy source, as designated in the tariff by the Public Service Commission of
3448 Utah; and

3449 (b) the exemption under Subsection (47)(a) applies to the portion of the tariff rate a
3450 customer pays under the tariff described in Subsection (47)(a) that exceeds the tariff rate under
3451 the tariff described in Subsection (47)(a) that the customer would have paid absent the tariff;

3452 (48) sales or rentals of mobility enhancing equipment if a person presents a
3453 prescription for the mobility enhancing equipment;

3454 (49) sales of water in a:

3455 (a) pipe;

3456 (b) conduit;

3457 (c) ditch; or

3458 (d) reservoir;

3459 (50) sales of currency or coins that constitute legal tender of a state, the United States,
3460 or a foreign nation;

3461 (51) (a) sales of an item described in Subsection (51)(b) if the item:

3462 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and

3463 (ii) has a gold, silver, or platinum content of 50% or more; and

3464 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

3465 (i) ingot;

3466 (ii) bar;

3467 (iii) medallion; or

3468 (iv) decorative coin;

3469 (52) amounts paid on a sale-leaseback transaction;

3470 (53) sales of a prosthetic device:

3471 (a) for use on or in a human; and

3472 (b) (i) for which a prescription is required; or

3473 (ii) if the prosthetic device is purchased by a hospital or other medical facility;

3474 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of
3475 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery
3476 or equipment is primarily used in the production or postproduction of the following media for
3477 commercial distribution:

- 3478 (i) a motion picture;
- 3479 (ii) a television program;
- 3480 (iii) a movie made for television;
- 3481 (iv) a music video;
- 3482 (v) a commercial;
- 3483 (vi) a documentary; or
- 3484 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the
3485 commission by administrative rule made in accordance with Subsection (54)(d); or

3486 (b) [~~notwithstanding Subsection (54)(a);~~] purchases, leases, or rentals of machinery or
3487 equipment by an establishment described in Subsection (54)(c) that is used for the production
3488 or postproduction of the following are subject to the taxes imposed by this chapter:

- 3489 (i) a live musical performance;
- 3490 (ii) a live news program; or
- 3491 (iii) a live sporting event;
- 3492 (c) the following establishments listed in the 1997 North American Industry
3493 Classification System of the federal Executive Office of the President, Office of Management
3494 and Budget, apply to Subsections (54)(a) and (b):
 - 3495 (i) NAICS Code 512110; or
 - 3496 (ii) NAICS Code 51219; and
- 3497 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3498 commission may by rule:

- 3499 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
3500 or
- 3501 (ii) define:

- 3502 (A) "commercial distribution";
- 3503 (B) "live musical performance";
- 3504 (C) "live news program"; or
- 3505 (D) "live sporting event";
- 3506 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 3507 on or before June 30, 2027, of tangible personal property that:
- 3508 (i) is leased or purchased for or by a facility that:
- 3509 (A) is an alternative energy electricity production facility;
- 3510 (B) is located in the state; and
- 3511 (C) (I) becomes operational on or after July 1, 2004; or
- 3512 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 3513 2004, as a result of the use of the tangible personal property;
- 3514 (ii) has an economic life of five or more years; and
- 3515 (iii) is used to make the facility or the increase in capacity of the facility described in
- 3516 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
- 3517 transmission grid including:
- 3518 (A) a wind turbine;
- 3519 (B) generating equipment;
- 3520 (C) a control and monitoring system;
- 3521 (D) a power line;
- 3522 (E) substation equipment;
- 3523 (F) lighting;
- 3524 (G) fencing;
- 3525 (H) pipes; or
- 3526 (I) other equipment used for locating a power line or pole; and
- 3527 (b) this Subsection (55) does not apply to:
- 3528 (i) tangible personal property used in construction of:
- 3529 (A) a new alternative energy electricity production facility; or

3530 (B) the increase in the capacity of an alternative energy electricity production facility;

3531 (ii) contracted services required for construction and routine maintenance activities;

3532 and

3533 (iii) unless the tangible personal property is used or acquired for an increase in capacity

3534 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or

3535 acquired after:

3536 (A) the alternative energy electricity production facility described in Subsection

3537 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or

3538 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described

3539 in Subsection (55)(a)(iii);

3540 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but

3541 on or before June 30, 2027, of tangible personal property that:

3542 (i) is leased or purchased for or by a facility that:

3543 (A) is a waste energy production facility;

3544 (B) is located in the state; and

3545 (C) (I) becomes operational on or after July 1, 2004; or

3546 (II) has its generation capacity increased by one or more megawatts on or after July 1,

3547 2004, as a result of the use of the tangible personal property;

3548 (ii) has an economic life of five or more years; and

3549 (iii) is used to make the facility or the increase in capacity of the facility described in

3550 Subsection (56)(a)(i) operational up to the point of interconnection with an existing

3551 transmission grid including:

3552 (A) generating equipment;

3553 (B) a control and monitoring system;

3554 (C) a power line;

3555 (D) substation equipment;

3556 (E) lighting;

3557 (F) fencing;

- 3558 (G) pipes; or
- 3559 (H) other equipment used for locating a power line or pole; and
- 3560 (b) this Subsection (56) does not apply to:
- 3561 (i) tangible personal property used in construction of:
- 3562 (A) a new waste energy facility; or
- 3563 (B) the increase in the capacity of a waste energy facility;
- 3564 (ii) contracted services required for construction and routine maintenance activities;
- 3565 and
- 3566 (iii) unless the tangible personal property is used or acquired for an increase in capacity
- 3567 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:
- 3568 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as
- 3569 described in Subsection (56)(a)(iii); or
- 3570 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described
- 3571 in Subsection (56)(a)(iii);
- 3572 (57) (a) leases of five or more years or purchases made on or after July 1, 2004 but on
- 3573 or before June 30, 2027, of tangible personal property that:
- 3574 (i) is leased or purchased for or by a facility that:
- 3575 (A) is located in the state;
- 3576 (B) produces fuel from alternative energy, including:
- 3577 (I) methanol; or
- 3578 (II) ethanol; and
- 3579 (C) (I) becomes operational on or after July 1, 2004; or
- 3580 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as
- 3581 a result of the installation of the tangible personal property;
- 3582 (ii) has an economic life of five or more years; and
- 3583 (iii) is installed on the facility described in Subsection (57)(a)(i);
- 3584 (b) this Subsection (57) does not apply to:
- 3585 (i) tangible personal property used in construction of:

3586 (A) a new facility described in Subsection (57)(a)(i); or
3587 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or
3588 (ii) contracted services required for construction and routine maintenance activities;
3589 and
3590 (iii) unless the tangible personal property is used or acquired for an increase in capacity
3591 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:
3592 (A) the facility described in Subsection (57)(a)(i) is operational; or
3593 (B) the increased capacity described in Subsection (57)(a)(i) is operational;
3594 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a
3595 product transferred electronically to a person within this state if that tangible personal property
3596 or product transferred electronically is subsequently shipped outside the state and incorporated
3597 pursuant to contract into and becomes a part of real property located outside of this state;
3598 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other
3599 state or political entity to which the tangible personal property is shipped imposes a sales, use,
3600 gross receipts, or other similar transaction excise tax on the transaction against which the other
3601 state or political entity allows a credit for sales and use taxes imposed by this chapter; and
3602 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,
3603 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a
3604 refund:
3605 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;
3606 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on
3607 which the sale is made;
3608 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the
3609 sale prior to filing for the refund;
3610 (iv) for sales and use taxes paid under this chapter on the sale;
3611 (v) in accordance with Section 59-1-1410; and
3612 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if
3613 the person files for the refund on or before June 30, 2011;

3614 (59) purchases:
3615 (a) of one or more of the following items in printed or electronic format:
3616 (i) a list containing information that includes one or more:
3617 (A) names; or
3618 (B) addresses; or
3619 (ii) a database containing information that includes one or more:
3620 (A) names; or
3621 (B) addresses; and
3622 (b) used to send direct mail;
3623 (60) redemptions or repurchases of a product by a person if that product was:
3624 (a) delivered to a pawnbroker as part of a pawn transaction; and
3625 (b) redeemed or repurchased within the time period established in a written agreement
3626 between the person and the pawnbroker for redeeming or repurchasing the product;
3627 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:
3628 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;
3629 and
3630 (ii) has a useful economic life of one or more years; and
3631 (b) the following apply to Subsection (61)(a):
3632 (i) telecommunications enabling or facilitating equipment, machinery, or software;
3633 (ii) telecommunications equipment, machinery, or software required for 911 service;
3634 (iii) telecommunications maintenance or repair equipment, machinery, or software;
3635 (iv) telecommunications switching or routing equipment, machinery, or software; or
3636 (v) telecommunications transmission equipment, machinery, or software;
3637 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible
3638 personal property or a product transferred electronically that are used in the research and
3639 development of alternative energy technology; and
3640 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3641 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

3642 purchases of tangible personal property or a product transferred electronically that are used in
3643 the research and development of alternative energy technology;

3644 (63) (a) purchases of tangible personal property or a product transferred electronically
3645 if:

3646 (i) the tangible personal property or product transferred electronically is:

3647 (A) purchased outside of this state;

3648 (B) brought into this state at any time after the purchase described in Subsection

3649 (63)(a)(i)(A); and

3650 (C) used in conducting business in this state; and

3651 (ii) for:

3652 (A) tangible personal property or a product transferred electronically other than the
3653 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property
3654 for a purpose for which the property is designed occurs outside of this state; or

3655 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
3656 outside of this state;

3657 (b) the exemption provided for in Subsection (63)(a) does not apply to:

3658 (i) a lease or rental of tangible personal property or a product transferred electronically;

3659 or

3660 (ii) a sale of a vehicle exempt under Subsection (33); and

3661 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
3662 purposes of Subsection (63)(a), the commission may by rule define what constitutes the
3663 following:

3664 (i) conducting business in this state if that phrase has the same meaning in this
3665 Subsection (63) as in Subsection (24);

3666 (ii) the first use of tangible personal property or a product transferred electronically if
3667 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

3668 (iii) a purpose for which tangible personal property or a product transferred
3669 electronically is designed if that phrase has the same meaning in this Subsection (63) as in

- 3670 Subsection (24);
- 3671 (64) sales of disposable home medical equipment or supplies if:
- 3672 (a) a person presents a prescription for the disposable home medical equipment or
- 3673 supplies;
- 3674 (b) the disposable home medical equipment or supplies are used exclusively by the
- 3675 person to whom the prescription described in Subsection (64)(a) is issued; and
- 3676 (c) the disposable home medical equipment and supplies are listed as eligible for
- 3677 payment under:
- 3678 (i) Title XVIII, federal Social Security Act; or
- 3679 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
- 3680 (65) sales:
- 3681 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
- 3682 District Act; or
- 3683 (b) of tangible personal property to a subcontractor of a public transit district, if the
- 3684 tangible personal property is:
- 3685 (i) clearly identified; and
- 3686 (ii) installed or converted to real property owned by the public transit district;
- 3687 (66) sales of construction materials:
- 3688 (a) purchased on or after July 1, 2010;
- 3689 (b) purchased by, on behalf of, or for the benefit of an international airport:
- 3690 (i) located within a county of the first class; and
- 3691 (ii) that has a United States customs office on its premises; and
- 3692 (c) if the construction materials are:
- 3693 (i) clearly identified;
- 3694 (ii) segregated; and
- 3695 (iii) installed or converted to real property:
- 3696 (A) owned or operated by the international airport described in Subsection (66)(b); and
- 3697 (B) located at the international airport described in Subsection (66)(b);

- 3698 (67) sales of construction materials:
- 3699 (a) purchased on or after July 1, 2008;
- 3700 (b) purchased by, on behalf of, or for the benefit of a new airport:
- 3701 (i) located within a county of the second class; and
- 3702 (ii) that is owned or operated by a city in which an airline as defined in Section
- 3703 59-2-102 is headquartered; and
- 3704 (c) if the construction materials are:
- 3705 (i) clearly identified;
- 3706 (ii) segregated; and
- 3707 (iii) installed or converted to real property:
- 3708 (A) owned or operated by the new airport described in Subsection (67)(b);
- 3709 (B) located at the new airport described in Subsection (67)(b); and
- 3710 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 3711 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 3712 (69) purchases and sales described in Section 63H-4-111;
- 3713 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 3714 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 3715 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 3716 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 3717 powered aircraft; or
- 3718 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 3719 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 3720 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 3721 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 3722 powered aircraft;
- 3723 (71) subject to Section 59-12-104.4, sales of a textbook for a higher education course:
- 3724 (a) to a person admitted to an institution of higher education; and
- 3725 (b) by a seller, other than a bookstore owned by an institution of higher education, if

3726 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
3727 textbook for a higher education course;

3728 (72) a license fee or tax a municipality imposes in accordance with Subsection
3729 10-1-203(5) on a purchaser from a business for which the municipality provides an enhanced
3730 level of municipal services;

3731 (73) amounts paid or charged for construction materials used in the construction of a
3732 new or expanding life science research and development facility in the state, if the construction
3733 materials are:

- 3734 (a) clearly identified;
- 3735 (b) segregated; and
- 3736 (c) installed or converted to real property; [~~and~~]

3737 (74) amounts paid or charged for:

3738 (a) a purchase or lease of machinery and equipment that:

3739 (i) are used in performing qualified research:

3740 (A) as defined in Section 59-7-612;

3741 (B) in the state; and

3742 (C) with respect to which the purchaser pays or incurs a qualified research expense as
3743 defined in Section 59-7-612; and

3744 (ii) have an economic life of three or more years; and

3745 (b) normal operating repair or replacement parts:

3746 (i) for the machinery and equipment described in Subsection (74)(a); and

3747 (ii) that have an economic life of three or more years[~~;~~]; and

3748 (75) amounts paid or charged for a purchase or lease made by an electronic financial
3749 payment service, of:

3750 (a) machinery and equipment that:

3751 (i) are used in the operation of the electronic financial payment service; and

3752 (ii) have an economic life of three or more years; and

3753 (b) normal operating repair or replacement parts that:

3754 (i) are used in the operation of the electronic financial payment service; and

3755 (ii) have an economic life of three or more years.

3756 Section 4. **Effective dates.**

3757 (1) Except as provided in Subsection (2), this bill takes effect on July 1, 2013.

3758 (2) The actions affecting Section 59-12-102 (Effective 07/01/14) take effect on July 1,

3759 2014.